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(Return)

SUPREME COURT OF THE UNITED STATES.

No. ~~221~~ ~~125~~ 74. 66

ROBERT T. HARVEY AND OTHERS, PLAINTIFFS IN ERROR;

vs.

EDWARD GRISWOLD TYLER, HENRY J. WHITEHOUSE, AND EVELINE, HIS WIFE, HERMAN BRUEN, ALEXANDER M. BRUEN, AND WILLIAM PENNINGTON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
Western District of Virginia, ss:

HENRY J. WHITEHOUSE and others
vs.
ROBERT T. HARVEY and others. } Record in ejectment.

Pleas before the honorable John W. Brockenbrough, judge of the district court of the United States for the western district of Virginia, at Charleston, on Saturday, the 11th day of August, Anno Domini eighteen hundred and sixty, and the 85th year of the independence of the United States of America.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the said court at Charleston, on the first Monday in August, in the year 1859, came Henry J. Whitehouse and others, by their attorney, and filed their declaration in ejectment against Robert T. Harvey and others, with proof of the service of notice thereof on all the defendants except Henry Tucker, Thomas C. Harrison, Mrs. Mary Hay, Elizabeth Jividen, John P. Martin, Preston Trotter and Jonathan Fielder.

Which declaration and notice, together with the return thereon, are in the words and figures following, to wit:

Declaration.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA,

Holden at Charl-ston, Kanawha county, Virginia.

Edward Griswold Tyler, a citizen of the State of New York, plaintiff, complains of Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John W. Dawson, Michael Derrick, William B. Sigmon, Hiram Asbury, William A. Asbury, John J. Brown, Silas Carney, James Casey, William Clendenen, Benjamin Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs.

Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Mose Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, David Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Ruben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Hitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sauders, Jacob M Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullin, A. A. Handley, John A. Harmon, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Henson, sr., Jarrett Hill, Samuel P. Stover, Miriam G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, John Jividen, Thomas A. Vickars, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry Fisher, Jeremiah Harrison. Mrs. Mary Hay, George Higgenbotham, Thomas Jones, Martin King, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said Edward Griswold Tyler, on the first day of January, 1859, was possessed in fee of a certain tract or parcel of land granted by the said State of Virginia, by Robert Brooke, esq., then governor of said State of Virginia, to Samuel Hollingsworth, by patent bearing date the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson and Kanawha, in said State of Virginia, and known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles

to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and sixty-eight poles, a branch of the last-mentioned creek, two hundred and forty-six poles further a right hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six poles to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of the Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters, noted as before, at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters as marked in the plan, at twelve poles, at four hundred poles, and two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth withhold from the said Edward Griswold Tyler the possession thereof, to the damage of him, the said Edward Griswold Tyler, of $10,000, and therefore he brings his suit, &c.

2 *Second count.*

And for this, that Henry John Whitehouse, a citizen of the State of Illinois, plaintiff, complains of Hiram Asbury, William A. Asbury, John J. Brown, Silas Carney, James Casey, William Clendenin, Benjamin Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harmon, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Moses Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, David Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sanders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullen, A. A. Handley, John A. Harman, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Henson, sr., Jarrett Hill, Samuel P. Stover, William G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, Thomas A. Vickers, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry Fisher, Jeremiah Harrison, Mrs. Mary Hay, George Higgenbotham, Thomas Jones, Martin King, Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thomas Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John W. Dawson, Michael Derrick, William B. Sigmon, John Jividen, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who

have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiff heretofore, to wit, on the first day of January, 1859, was possessed in fee of a certain tract or parcel of land granted by the Commonwealth of Virginia to Samuel Hollingsworth, by patent signed and sealed according to law by Robert Brooke, esq., then governor of the State of Virginia, and bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into the Pocatalico on the lower side above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and sixty-eight poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters noted as before at two hundred and ninety-six poles, at one hundred and thirty poles,

at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said Henry John Whitehouse the possession thereof, to his damage of $10,000, and therefore he brings suit, &c.

Third count.

And for this, that Mary Lundie Bruen, Charles C. Perkins, and Frances D. Perkins, his wife, late Frances D. Bruen, Alexander McW. Bruen and Hermann Bruen, all citizens of the State of New York, and Henry J. Whitehouse, and Evelina H. Whitehouse, his wife, late Evelina H. Bruen, citizens of the State of Illinois, and William Pennington, a citizen of the State of New Jersey. The said Alexander McW. Bruen and Hermann Bruen, in their own right, and with said William Pennington, trustees of the said Mary L. Bruen and Frances D. Perkins, and Charles C. Perkins, in right of his wife, the said Frances, plaintiffs, complain of Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, Wil-

liam D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thomas Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John W. Dawson, Michael Derrick, William B. Sigmon, Hiram Asbury, William A. Asbury, John J. Brown, Silas Carney, James Casey, William Clendenin, Benjamin Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Mose Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, David Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Ruben B. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sauders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullin, A. A. Handley, John A. Harmon, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Henson, sr., Jarrett Hill, Samuel P. Stover, Miriam G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, John Jividen, Thomas A. Vickars, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry Fisher, Jerremiah Harrison, Mrs. Mary Hay, George Higgenbotham,

Thomas Jones, Martin King, defendants, all citizens of the

3 State of Virginia, and residing in the western district thereof,

who have been summoned, &c., of a plea of trespass in ejectment, for that they, the said plaintiffs, heretofore, to wit, on the first day of January, 1859, were possessed in fee of a certain tract or parcel of land granted by the said State of Virginia, by Robert Brooke, esq., then governor of said State of Virginia, to Samuel Hollingsworth, by patent bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence

north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha riv r above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and sixty-eight poles a branch of the last-mentioned creek, two hundred and forty-six poles further to a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six poles to another, three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of the Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters noted as before at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence

south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters, as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles, to the beginning.

And being so possessed thereof, the said defendants, afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiffs the possession thereof, to the damage of the said plaintiffs of $10,000, and therefore he brings his suit, &c.

Fourth count.

And for this, that Charles C. Perkins and Frances D. Perkins, his wife, late Frances D. Bruen, and Mary Lundie Bruen, citizens of the State of New York, plaintiffs, complain of Hiram Asbury, William A. Asbury, John J. Brown, Silas Carney, James Casey, Wm. Clendenin, Benj. Coleman, Jas. Craigo, Mrs. Sarah Craigo, Jno Craigo, Andrew Derrick, Michael Derrick, William B. Sigmon, John Jividen, John W. Dawson, Matthias Goodwin, Leonard C. Fisher, Allen W. Harmon, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs Catherine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Moses Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, Davis Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sanders, Jacob M. Sigmon, John M. Smith, Robert Smith, Wm. Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullen, A. A. Handley, John A. Harman, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Hensen, sr., Jarrett Hill, Samuel P. Stover, William G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, Thomas A. Vickers, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, Wm. Craigo, Jos. Fisher, Washington Fisher, Wm. Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry

Fisher, Jeremiah Harrison, Mrs. Mary Hay, Geo. Higgenbotham, Thos. Jones, Martin King, Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, Jas. Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, Wm. D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Baily, Alfred Baily, John J. Bean, George B. Rust, George Fisher, Preston Trotter, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiff heretofore, to wit, on the first day of January, 1859, was possessed in fee of a certain tract or parcel of land granted by the Commonwealth of Virginia to Samuel Hollingsworth, by patent signed and sealed according to law, by Robert Brooke, esq., then governor of the State of Virginia, and bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and eighty-six poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles

to another, two hundred and twenty-eight poles to another, one hundred and forty-six to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters, noted as before, at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters, as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiffs the possession thereof, to their damage of $10,000, and therefore they bring their suit, &c.

Fisher, Jeremiah Harrison, Mrs. Mary Hay, Geo. Higgenbotham, Thos. Jones, Martin King, Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, Jas. Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, Wm. D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Baily, Alfred Baily, John J. Bean, George B. Rust, George Fisher, Preston Trotter, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiff heretofore, to wit, on the first day of January, 1859, was possessed in fee of a certain tract or parcel of land granted by the Commonwealth of Virginia to Samuel Hollingsworth, by patent signed and sealed according to law, by Robert Brooke, esq., then governor of the State of Virginia, and bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and eighty-six poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles

to another, two hundred and twenty-eight poles to another, one hundred and forty-six to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters, noted as before, at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters, as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiffs the possession thereof, to their damage of $10,000, and therefore they bring their suit, &c.

Fifth count.

4 And for this, that Alexander McW. Bruen, a citizen of the State of New York, plaintiff, complains of Martin E. King, John Little, Oliver T. Milam, Sebastian Ray, Wm. Ray, Thos. Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John W. Dawson, Michael Derrick, Wm. B. Sigmon, Hiram Asbury, Wm. A. Asbury, John J. Brown, Silas Carney, James Casey, William Clendenin, Benjamin Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Mose Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, David Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Ruben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sauders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullin, A. A. Handley, John A. Harmon, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Hensen, sr., Jarrett Hill, Samuel P. Stover, Miram G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, John Jividen, Thomas A. Vickars, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry Fisher, Jeremiah Harrison, Mrs. Mary Hay, George Higgenbotham, Thos. Jones, Martin King, Roderick King, Thos. Landers, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that he, the said plaintiff, heretofore, to wit, on the first day of January, 1859, was possessed in fee of a certain tract or parcel of land granted by the said State of Virginia, by Robert Brooke, esq., then governor of said State of Virginia, to Samuel Hollingsworth, by patent bearing date on the 3d day of March, 1796, con-

taining one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof, and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river; from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and sixty-eight poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six poles to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of the Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters noted as before at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a

branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff of $10,000, and therefore he brings his suit, &c.

Sixth count.

And for this, that Hermann Bruen, a citizen of the State of New York, plaintiff, complains of Hiram Asbury, William A. Asbury, Benjamin Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Michael Derrick, Wm. B. Sigmon, John Jividen, John W. Dawson, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Moses Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, Davis Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sanders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, Wm. A. McMullin, A. A. Handley, John A. Harman, Bushrod Harrison, Thomas C.

Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Hensen, sr., Jarrett Hill, Samuel P. Stover, William G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, Thomas A. Vickers, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harman, Henry Harman, Christman Harrison, Perry Fisher, Jeremiah Harrison, Mrs. Mary Hay, George Higgenbotham, Thomas Jones, Martin King, Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thomas Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Baily, Alfred Baily, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John J. Brown, Silas Carney, James Casey, William Clendenin, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiff heretofore, to wit, on the first day of January, 1859, was possessed in fee for a certain tract or parcel of land granted by the Commonwealth of Virginia to Samuel Hollingsworth, by patent signed and sealed according to law, by Robert Brooke, esq., then governor of the State of Virginia, and bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beach in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river, from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right hand fork of the first creek empty-

ing into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and eighty-eight poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters, noted as before, at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters, as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten

poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiff the possession thereof, to his damage of $10,000, and he therefore brings his suit, &c.

Seventh count.

And for this, that Henry J. Whitehouse, and Evelina H. Whitehouse, his wife, late Evelina H. Bruen, citizens of the State of Illinois, plaintiffs, complain of Martin E. King, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, George Higgenbotham, Thomas Jones, Martin King, Roderick King, Thomas Landers, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, Wm. D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John W. Dawson, Michael Derrick, Wm. B. Sigmon, Hiram Asbury, William A. Asbury, John J. Brown, Silas Carney, James Casey, William Clendenin, Benj. Coleman, James Craigo, Mrs. Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Mose Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, David Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Ruben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sauders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullin, A. A. Handley, John A. Harmon, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Henson, sr., Jarrett Hill, Samuel P. Stover, Miriam G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, John Jividen, Thomas A. Vickars, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harmon, Christman Harrison, Perry Fisher, Jeremiah

Harrison, Mrs. Mary Hay, defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that they, the said plaintiffs, heretofore, to wit, on the first day of January, 1859, were possessed in fee of a certain tract or parcel of land granted by the said State of Virginia, by Robert Brooke, esq., then governor of said State of Virginia, to Samuel Hollingsworth, by patent bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river and about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river, from thence two hunhundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creek, crossing waters as follows: at one hundred and sixty-eight poles a branch of the last mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six poles to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of the Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-

five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters noted as before at two hundred and nintety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants, afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiffs the possession thereof, to the damage of the said plaintiffs of $10,000, and therefore they bring their suit, &c.

6 *Eighth count.*

And for this, that Peter Brynburg, James Lea, and John Warner, trustees of the president, directors, and company of the bank of Delaware, all citizens of the State of Delaware, plaintiffs, complain of Hiram Asbury, William A. Asbury, Benj. Coleman, James Craigo, Mrs. Sarah Craigo, Silas Carney, James Casey, William Clendenin, John Craigo, Andrew Derrick, Michael Derrick, Wm. B. Sigmon, John Jividen, John W. Dawson, Matthias Goodwin, Leonard C. Fisher, Allen W. Harmon, Calvin Hart, William Harrison, Benjamin Hedrick, Mrs. Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William

Hill, Moses Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, Davis Hubbard, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Sanders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. W. Atkinson, James H. Brown, Benjamin P. Byram, George Goode, Thomas Davis, Jonathan Fielder, John P. Hale, William A. McMullen, A. A. Handley, John A. Harman, Bushrod Harrison, Thomas C. Harrison, George W. Hedrick, Robert T. Harvey, James W. Hoge, Ira J. McGinnis, F. N. Read, Richard Snell, Thomas H. Harvey, John Hensen, sr., Jarrett Hill, Samuel P. Stover, William G. Hoffman, James Hutchinson, S. K. Jennings, Elizabeth Jividen, Ezekiel Jividen, Joel Jividen, Thomas A. Vickers, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Castro, Samuel Conway, William Craigo, Joseph Fisher, Washington Fisher, William Fisher, Anthony Hall, Edward Harmon, Henry Harman, Christman Harrison, Perry Fisher, Jeremiah Harrison, Mrs. Mary May, George Higgenbotham, Thomas Jones, Martin King, Martin Edward King, Roderick King, Thomas Landers, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, John P. Martin, James T. Lett, D. S. Montague, Andrew Parks, Jonathan Pfost, Milton Shank, James Stewart, Wm. D. Short, John J. Thompson, James Tucker, Henry Tucker, L. P. Watkins, Arthur Waugh, Creed M. Boswell, George Cottrell, John M. Fisher, Noah Dawson, John Dryden, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David Thos. Sanders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Baily, Alfred Baily, John J. Bean, George B. Rust, George Fisher, Preston Trotter, John J. Brown. defendants, all citizens of the State of Virginia, and residing in the western district thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiffs, heretofore, to wit, on the first day of January, 1859, were possessed in fee of a certain tract or parcel of land granted by the Commonwealth of Virginia to Samuel Hollingsworth, by patent signed and sealed according to law, by Robert Brooke, esq., then governor of the State of Virginia, and bearing date on the 3d day of March, 1796, containing one hundred thousand acres, now lying and being in the counties of Putnam, Mason, Jackson, and Kanawha, in said State of Virginia, known as the "Jabel tract," and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the lower side. Said beginning is about one mile from Kanawha river and

about the same distance from Pocatalico, and running from thence north forty-five degrees west, nine hundred and eighty-six poles to two small hickories on the side of the river ridge, about four poles from the top thereof, crossing waters at the following distances, viz: from said beginning four hundred and twenty-two poles to a branch running into Kanawha river, from thence two hundred and eighty poles to a small creek running into said river, and two hundred and eighty-four poles to said hickories; thence north seventeen degrees west, sixty-eight poles to a red oak and ash; thence north forty-five degrees west, one hundred and twenty-two poles to a white oak and hickory, north thirty degrees west, two hundred and sixty-six poles to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north forty-five degrees west, two thousand and ninety poles to a walnut and buckeye on a small fork of Eighteen Mile creak, crossing waters as follows: at one hundred and sixty-eight poles a branch of the last-mentioned creek, two hundred and forty-six poles further a right-hand fork of Buffalo creek, three hundred and forty-eight poles to Buffalo creek, seventy poles a branch of said creek, one hundred and eighty-six poles to another branch, running out of the survey two hundred and forty-six poles to a branch of Eighteen Mile creek, one hundred and twenty-four poles to another, two hundred and twenty-eight poles to another, one hundred and forty-six to another, and three hundred and twenty-eight to said walnut and buckeye; thence running up with the right-hand branches of Eighteen Mile creek, north forty-five degrees east, two thousand three hundred and seventy-two poles to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other as are marked in the places, viz: from the said walnut and sugar tree one hundred and sixty-four poles, two hundred and sixty poles, two hundred and ten poles, four hundred and ten poles, one hundred and fifty-four poles, two hundred and forty-six poles, three hundred and thirty-four poles, sixty-six poles, and two hundred and sixty-six poles to said hickory and sugar trees; thence with seventy-five degrees east, two thousand three hundred and sixty-six poles to a lind and sugar tree on a branch of Eighteen Mile creek, crossing waters noted as before at two hundred and ninety-six poles, at one hundred and thirty poles, at three hundred and sixty-six poles, at three hundred and sixty poles, at one hundred poles, at six hundred and twenty-two poles, and at two hundred and eighty-four poles to the said lind and sugar tree; thence south forty-five degrees east, three thousand five hundred and eighteen poles to three linds on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lind and sugar trees at three hundred and twenty-four poles, at two hundred and twenty poles, at two hundred and sixty poles, at two hundred and sixty-four poles, at two hundred and fourteen poles, at two hundred and twenty-six poles, at two hundred and forty poles, at two hundred and sixty-six poles, at five hundred and fifty-six poles, at four hundred and eighteen poles, and at two hundred and twenty-four poles to said three linds on a branch; thence down said branch south five degrees west, twenty poles, south ten degrees east, forty-six

poles to three beeches on the bank of the main left-hand fork of Pocatalico; thence south forty-six and a half degrees west, two thousand two hundred and ten poles to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three branches at three hundred poles, at four hundred and seventy poles, at four hundred and fifteen poles, at ten hundred and fourteen poles, at six hundred poles, and at two hundred and eleven poles to the said buckeye and sugar tree; thence south seventy-three degrees west, two thousand three hundred and eighty-two poles, crossing waters as marked in the plan, at twelve poles, at four hundred poles, at two hundred and eighty poles, at four hundred and ten poles, at sixty-six poles, at two hundred and ninety-four poles, at one hundred and thirty-four poles, at ninety poles, at one hundred and ten poles, at two hundred and sixty-four poles, and at three hundred and thirty-two poles to the beginning.

And being so possessed thereof, the said defendants afterwards, to wit, on the second day of January, 1859, entered into the said premises, and they do, and each of them doth, withhold from the said plaintiffs the possession thereof, to their damage of $10,000, and therefore they bring their suit, &c.

SMITH & SON, and
MILLER & NEWMAN, } *P. Q.*

To ——— ———:

Take notice, that the foregoing declaration in ejectment against you and others, will be filed in the clerk's office of the district court of the United States, holden for the western district of Virginia, at Charleston, Kanawha county, Virginia, on the first Monday in August next, that being a rule day of said court for said month of August, at which time and place you can attend, if you think proper.

Very respectfully, &c.,

SMITH & SON, and
MILLER & NEWMAN,
Attorneys for the Plaintiffs named in the foregoing declaration.

JULY 9, 1859.

Indorsed:

"I accept service of the above declaration and notice this 15th day of July, 1859.

"ANDREW PARKS."

"I accept service of the above declaration and notice this 15th day of July, 1859.

"JAMES H. BROWN."

"We accept service of the above declaration and notice this 15th day of July, 1859.

"J. P. HALL & WM. A. McMULLIN,
"By PARKS & BROWN, *their Atty's.*"

"I accept service of the above declaration and notice this 15th day of July, 1859.

"JOHN DRYDEN."

7 *Return on declaration.*

Served this declaration and notice, by delivering to James Martin, James T. Lett, Moses Higganbotham, Calvin Hart, W. C. Higganbotham, Thomas Saunders, James Goff, John J. Brown, Benjamin Hedrick, Edward Harmon, and Elisha M. Melton, a copy thereof, on the 18th day of July, 1859. And I further served said declaration and notice, as to Henry Harmon and George Bailey, by delivering to the wife of each of them a true copy thereof, on the same day and year, and giving information of its purport to each of said wives, said Harmon and Bailey not being found at their usual places of abode, respectively; and as to Thomas D. Pitchford, John M. Smith, Chrisman Harrison, Robert Smith, William A. Asbury, Andrew Derrick, Caleb King, David Thomas Saunders, Richard Saunders, Reuben P. Kennison, Doddridge Taylor, Oliver T. Milam, Anthony Hall, and David Hubbard, by delivering to each of them, in person, a true copy thereof, on the 19th day of July, 1859; and as to Benjamin Coleman, William Craigo, Mrs. Sarah Craigo, James Casey, William Ray, Sebastian Ray, James Craigo, James Higganbotham, Joseph Hutton, J. E. Saunders, William B. Sigmond, Leonard C. Fisher, and Jeremiah Harrison, by delivering a like copy to each of them, in person, on the 20th day of July, 1859; and as to William Coleman, Silas Runyan, William Fisher, Matthias Goodwin, Nathan Casto, Washington Fisher, Aaron Hill, Thomas Priddy, Thomas Jones, Henry Hedrick, John Hedrick, Ezekiel Jividen, John Jividen, Thomas Warner, and Bennett Rayburn, by delivering to each of them, in person, a like copy, on the 21st day of July, 1859; and as to William Duncan, Samuel McGraw, James Arthur, Thomas Stanley, Myram G. Hoffman, Robert T. Harvey, Richard Snell, George Higganbotham, and Benjamin P. Byrum, by delivering to each of them, in person, a like copy, on the 22d day of July, 1859; and as to Milton Shank, by delivering to him, in person, a like copy, on the 23d day of July, 1859; and as to John A. Harmon, D. S. Montague, Ira J. McGinnis, James Stewart, A. A. Handley, F. N. Read, and James W. Hoge, by delivering to each of them, in person, a like copy, on the 25th day of July, 1859; and as to Hiram Asbury and John R. McClanahan, by delivering to each of them, in person, a like copy, on the 26th day of July, 1859; and as to Arthur Waugh, by delivering to him, in person, a like copy, on the 27th day of July, 1859; and as to Silas Carney, William Smith, Nathaniel King, Michael Derrick, John J. Beam, Martin Edward King, Martin King, and John Craigo, by delivering to the wife of each of them a like copy, and giving information of its purport to each of said wives, on the 19th day of July, 1859, the parties themselves not being found at their usual respective places of abode; and as to Roderick King, John Higganbotham, Josiah Bryant, and Arthur Ray, by delivering a like copy thereof to the wife of each of them, respectively, on the 20th day of July, 1859, and giving information of its purport to each of said wives, respectively, the parties themselves not being found at their usual respective places of abode; and as to Allen W. Harmon, J. W. Atkinson, Wil-

liam Hill, Joseph Fisher, George Cottrell, Gill C. Turbell, and Allen Warner, on the 21st day of July, 1859; Samuel Conway, James McGraw, George Goode, Duroy Bradley, John Little, and George W. Hedrick, on the 22d day of July, 1859; James Hutchinson, on the 23d day of July, 1859; L. P. Watkins and John J. Thompson, on the 25th day of July, 1859; George B. Rust, Hezekiah Agee,
8 Alfred Bailey, and Bushrod Bailey, on the 26th day of July, 1859; Silas Painter, John M. Fisher, Samuel P. Stover, and Joel Jividen, on the 27th day of July, 1859; Perry Fisher, Noah Dawson, and George Fisher, on the 29th day of July, 1859, by delivering on those days, respectively, to the wife of each of them, a true copy of this declaration and notice, and giving information of the purport thereof to each of said wives, respectively, the parties themselves not being found at their usual respective places of abode; and as to Washington Parsons and Jonathan Pfost, on the 27th day of July, 1859, and John E. Ray and John W. Dawson, on the 29th day of July, 1859, by delivering a true copy thereof to each of them, in person, on those days respectively.

And I further served this declaration and notice on John Russell, by delivering a true copy thereof to Alvin Russell, his son, a white person, over sixteen years of age, and a member of his family, on the 21st day of July, 1859, at his father's house, and also giving information of its purport to him, the said John Russell not being found at his usual place of abode; and on Harmon Williams, by delivering a like copy to Lucinda Carney, wife of Silas Carney, on the 19th day of July, 1859, at the house of said Silas Carney, that being the usual place of abode of said Harmon Williams, at which place he was not found, and by giving her information of its purport, *to her*, she being a white person, and sixteen years of age, and the said Harman Williams being a member of said Carney's family; and on Benjamin King, by delivering a like copy to Temperance Derrick, at the usual place of abode of said King, on the 19th day of July, 1859, and by giving information of its purport to her, said Temperance Derrick being a white person over sixteen years of age, and a member of said King's family, and said King not being found at his usual place of abode; and on Simeon Kelly, by delivering a like copy to William Kelly, his brother, at the usual place of abode of said Simeon, on the 20th day of July, 1859, and by giving information of its purport to him, he, said William, being a white person over sixteen years of age, and a member of said Simeon's family, he, said Simeon, not being found at his usual place of abode; and on Jacob M. Sigmond, by delivering a like copy to William B. Sigmond, his father, at the usual place of abode of said Jacob, on the 20th day of July, 1859, and by giving information of its purport to said William, he, said William, being a white person over sixteen years of age, and said Jacob being a member of his family, but not found at his usual place of abode; and on Mrs. Catharine Hedrick, by delivering a like copy to Elizabeth Jane Hammond, at the usual place of abode of said Catharine, on the 21st day of July, 1859, and by giving information of its purport to said Elizabeth, she being a white person over sixteen years of age, and a member of said Catharine's family, and said Catharine not being found at her usual place of abode; and on Creed M. Boswell, by delivering a like copy

to his brother, Gilbert Boswell, at the residence of said Gilbert, on the 27th day of July, 1859, and by giving information of its purport to him, he being a white person over sixteen years of age, and said
9 Creed M. Boswell having no regular place of abode, and at that time boarding temporarily with his said brother, but being absent from his said brother's house on the day of service; and on Jarrett Hill, by delivering a like copy to Elizabeth Jane Stover, his daughter, at the usual place of abode of said Jarrett, on the 27th day of July, 1859, and by giving information of its purport to her, she being a white person and over sixteen years of age, and a member of said Jarrett's family, and said Jarrett not being found at his usual place of abode; and on Charles Carney, by delivering a like copy to Josiah Thomas, at the usual abode of said Charles Carney, on the 28th day of July, 1859, and by giving information of its purport to him, *to him*, he being a white person over sixteen years of age, and a member of said Carney's family, said Carney not being found at his usual place of abode; and on Thomas H. Harvey, by delivering a like copy to his father, Robert T. Harvey, at the usual place of abode of said Thomas, on the 22d day of July, 1859, and by giving information of its purport to him, said Robert being a white person over sixteen years of age, and said Thomas being a member of his family but not found at his usual place of abode; and on Thomas A. Vicars, by delivering a like copy to his mother, Lucinda Vicars, at the usual place of abode of said Thomas, on the 26th day of July, 1859, the said Lucinda being a white person over sixteen years of age, and a member of the family of said Thomas, and by giving information of its purport to her at the same time, the said Thomas A. Vicars not being found at his usual place of abode.

And I further served this declaration and notice on William D. Short, on the 18th day of July, 1859, and on Augustus D. Wallace and Noah H. Hoffman, on the 22d day of July, 1859, and on Bushrod Harrison, on the 27th of July, 1859, by posting a true copy thereof on those days, respectively, upon the front door of the usual respective abode of each of them; neither the said parties themselves, nor their respective wives, nor any white person over sixteen years of age, and a member of the family of either of them, being found at the usual respective places of abode of either one of said parties.

And I further return that the service of this declaration and notice, so far as the same was served upon the wives of the parties defendants, was made at the usual place of abode of the parties so served therewith; that Henry Tucker, Thomas C. Harrison, Mrs. Mary Hay, Elizabeth Jividen, and John P. Martin, were not found; and that no service was had upon Preston Trotter and Jonathan Fielder for want of time.

W. C. BLAINE,
D. for J. T. Martin, Marshal of U. S.
Court for the Western District of Va.

Marshal's fees—

Services on 135 defendants...	$270 00
Expenses in lieu of mileage..	40 00
	310 00

11 And thereupon came the defendant, James H. Brown, by his attorney, and demurs specially to the said declaration and declarations, and to each of them, and to each count thereof. And the said defendant also demurs generally to the said declaration and declarations, and to each of them, and to each count thereof; and a day was thereupon given the plaintiffs, until the then next rules, to join in the said demurrers. And the said defendant, for plea in this behalf, said that he was not guilty of unlawfully withholding the premises claimed by the plaintiffs in the declaration, and of this he put himself upon the country; and a day is thereupon given the plaintiffs, until the next rules, to join issue to the said plea.

Demurrers and plea of John R. McClanahan and others.

And then came also the defendants, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, and Alfred Bailey, by their attorney, and demurred specially to the foregoing declaration and declarations, and to each of them, and to each of the counts thereof. And the said last-named defendants also demurred generally to the said declaration and declarations, and to each of them, and to each of the counts thereof; and a day was thereupon given the plaintiffs, until the then next rules, to join in the said demurrers. And the said defendants, for plea in this behalf, pleaded not guilty, and put themselves upon the country; and a day was thereupon given to the plaintiffs, to join issue to the said plea, until the then next rules.

Demurrers and plea of defendant, Andrew Parks.

And then came also the defendant, Andrew Parks, by his attorney, and demurred specially to the said declaration and declarations, and to each of them, and to each of the counts thereof. And the said last-named defendant also demurred generally to the said declaration and declarations, and to each of them, and to each of the counts thereof; and a day was thereupon given the plaintiffs, until the then next rules, to join in the said demurrers. And the said defendant, for plea in this behalf, pleaded not guilty, and put himself upon the country; and a day was thereupon given to the plaintiffs, to join issue to the said plea, until the next rules.

Demurrers and plea of the defendants, William A. McMullin and John P. Hale.

And at the same rules came also the defendants, William A. McMullin and John P. Hale, by their attorney, and demurred specially to the said declaration and declarations, and to each of them, and to each of the counts thereof. And the said last-named defendants also demurred generally to the said declaration and declarations, and to each of them, and to each of the counts thereof. And the said defendants, for plea in this behalf, pleaded not guilty, and put them-

selves upon the country; and a day was thereupon given to the plaintiffs, until the then next rules, to join in the said demurrers, and to join issue to the said plea.

Demurrers and plea of all the other defendants who are served with declaration and notice.

And at the same rules came also all the other defendants named in the said declaration, (excepting those not served therewith and the notice,) and demurred specially to the said declaration and
12 declarations *and declarations*, and to each of them, and to each of the counts thereof. And the said defendants also demur generally to the said declaration and declarations, and to each of the counts thereof. And the said defendants, for plea in this behalf, pleaded not guilty, and put themselves upon the country; and a day was thereupon given to the plaintiffs, until the next rules, to join in the said demurrers, and to join issue to the said plea.

Joinder in demurrers and issue to pleas.

And at rules held, as aforesaid, in the month of September, 1859, came the plaintiffs, by their attorney, and join in the special and general demurrers of the defendants to the plaintiffs' declaration and declarations, and to each count thereof; and the said plaintiffs also join issue to the pleas of the defendants entered at the last rules, and to each of said pleas.

Order of survey.

And at another day, to wit, at a district court of the United States for the western district of Virginia, held at Charleston, on Thursday, the 22d day of September, 1859, came the parties, by their attorneys, and thereupon, on motion of the plaintiffs, it was ordered that Abel P. Sinnett and John L. Cole, or either of them, do go upon the land in controversy, on such day as either party may request, and survey and lay off the same, as either party shall require, on giving reasonable notice of the time and place of commencing such survey, and return 7 fair plats and 2 fair reports thereof to the court; and that any one of the justices of Putnam county do then and there meet him, and examine and take the depositions of such witnesses as shall be produced by any of the parties, which are to be returned with the said plats and reports; and the marshal of this district is to attend said survey and remove force, if any shall be offered.

Demurrer overruled.

And at a court held as aforesaid, on Friday, the 23d day of September, 1859, came the parties, by their attorneys, and thereupon

the demurrers of the defendants to the plaintiffs' declaration and declarations, and to each count thereof, being argued and considered, were overruled.

Cause continued.

And at a court held as aforesaid, on Tuesday, the 24th day of April, 1860, by consent of parties, by their attorneys, this cause was continued until the special term of this court, appointed to be held here on Tuesday, the 17th day of July next; and, on motion of the defendants, the plats and reports, returned in this cause by John L. Cole, surveyor, were recommitted to him for further survey and report.

13 And at a court held as aforesaid, on Wednesday, the 18th day of July, 1860, came the parties, by their attorneys, and thereupon, on motion of the defendant, William Hill had leave to withdraw his plea of not guilty, pleaded generally with the other defendants in this cause, and to plead de novo to this action; and thereupon, he withdrawing his said plea, separately to the other defendant, saith, that he is not guilty of unlawfully withholding the premises claimed by the plaintiffs in their declaration, and of this he puts himself upon the country, and the plaintiffs did the like; whereupon this cause was continued until the next day morning.

At a court held as aforesaid, on Thursday, the 19th day of July, 1860, came again the parties, by their attorneys, and thereupon, it appearing to the satisfaction of the court that the defendant, George Cottrell, hath departed this life, it was ordered that his death be suggested. And the defendant, John Jividen, with the leave of the court, withdrew his plea of not guilty, heretofore plead by him, generally and jointly, with the other defendants in this suit; he then severally, as to all the defendants therein, for plea in this behalf, said that he was not guilty of unlawfully withholding the premises claimed by the plaintiffs in their declaration, and of this he put himself upon the country, and the plaintiffs did the like; whereupon the trial of the said issue, as to the said John Jividen, was deferred. And then came a jury, to wit, Robert McConnell, Joshua Burley, Peter Kirby, John Hughes, John Burley, Michael Dunn, Jacob C. Clarke, Cyrus Vance, Michael A. Coiner, Samuel McCune, William H. Cecil, jr., and L. G. Maupin, who, being selected by lot, impanelled, and sworn the truth to speak upon the issue joined, as to all the defendants in this action, except the defendants George Cottrell and John Jividen; and having heard the evidence in part, were adjourned over until the next day morning, 8 o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Friday, the 20th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the evidence, in part, were adjourned over until the next day morning, 8½ o'clock until which time this cause was continued.

And at a court held as aforesaid, on Saturday, the 21st day of July,

1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of yesterday; and having further heard the evidence in part, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

14 And at a court held as aforesaid, on Monday, the 23d day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the Saturday last preceding; and having further heard the evidence in part, were adjourned until to-morrow morning, 8½ o'clock, until which time this cause was continued. And, on motion of the defendants, it was ordered that the clerk do open a package of depositions received by him under seal and taken for the defendants in this cause, and the same was done accordingly.

And at a court held as aforesaid, on Tuesday, the 24th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the evidence, were adjourned until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Wednesday, the 25th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of yesterday; and having further heard the evidence, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Thursday, the 26th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the evidence, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Friday, the 27th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the evidence, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

15 And at a court held as aforesaid, on Saturday, the 28th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the evidence, were adjourned over until the Monday morning ensuing, until which time this cause was continued.

And at a court held as aforesaid, on Monday, the 30th day of July, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of Saturday last; and having further heard the evidence, were adjourned until to-morrow morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Tuesday, the 31st day of July, 1860, came again the parties, by their attorneys, and thereupon the defendant, George Goode, with the leave of the court, withdrew his plea of not guilty, pleaded by him in this cause; and, on motion of the plaintiffs, this cause was discontinued as to him. Whereupon, the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before, and having further heard the evidence in part, were adjourned until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Wednesday, the 1st day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having heard the evidence in full, and the argument of counsel in part, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Thursday, the 2d day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the arguments of counsel in part, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Friday, the 3d day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the arguments of counsel, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Saturday, the 4th day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the arguments of counsel, were adjourned over until the next Monday morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Monday, the 6th day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of Saturday last; and having further heard the arguments of counsel, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Tuesday, the 7th day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having further heard the arguments of counsel, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Wednesday, the 8th day of

August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and having heard the arguments of counsel in full, were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And at a court held as aforesaid, on Thursday, the 9th day of August, 1860, came again the parties, by their attorneys, and thereupon the jury impanelled and sworn in this cause appeared, in pursuance of their adjournment of the day before; and thereupon, the parties asking the instructions of the court to the jury, time is taken to consider thereof, and the said jury were adjourned over until the next day morning, 8½ o'clock, until which time this cause was continued.

And now, at this day, to wit, at a district court of the United States for the western district of Virginia, held at Charleston on Saturday, the 11th day of August, 1860, the same day and year first herein mentioned, came again the parties, by their attorneys, and thereupon
17 the jury empanelled and sworn in this cause appeared; and having been instructed by the court, upon their oath, do say that they find for the plaintiffs, Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, against the defendants following, to wit: Robert T. Harvey, William A. McMullin, John P. Hale, Benjamin P. Byran, Andrew Parks, James H. Brown, James W. Hoge, Ira J. McGinnis, James Hutchinson, Frederick N. Read, John J. Brown, John Dryden, Martin Edward King, Roderick King, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, James T. Lett, Dudley S. Montague, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Leander P. Watkins, Arthur Waugh, Creed M. Boswell, John M. Fisher, Noah Dawson, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David T. Saunders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, John W. Dawson, Michael Derrick, William B. Sigman, Hiram Asbury, William A. Asbury, Silas Carney, James Casey, William Clendenin, Benjamin Coleman, James Craigo, Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harmon, Calvin Hart, William Harrison, Benjamin Hedrick, Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higginbotham, John Higginbotham, Aaron Hill, William Hill, Mose Higginbotham, William T. Higganbotham, Francis Higginbotham, Joseph Hilton, Noah H. Hoffman, Simon Kelley, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Saunders, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Saunders, Jacob M. Sigman, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harman Williams, John Russell, Silas Painter, J. W. Atkinson, Thomas Davis, A. A. Handley, John

A. Harman, Bushrod Harrison, George W. Hedrick, Richard Snell, Thomas H. Harvey, Thomas A. Vicars, Jarrett Hill, John Henson Sim, Samuel P. Stover, Miriam G. Hoffman, S. K. Jennings, Ezekiel Jividen, Joel Jividen, William Duncan, James Arthur, George Bailey, Elisha B. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, William Fisher, Anthony Hall, Edward Harman, Henry Harman, Chrisman Harrison, Perry Fisher, Jeremiah Harrison, George Higginbotham, Thomas Jones, and Martin King, the land and premises in the declaration described, *in fee*, being a tract of 100,000 acres, now lying and being partly in the county of Putnam, Mason, Jackson, and Kanawha, and known as the "Jabel tract," and which was granted by the Commonwealth of Virginia to Samuel Hollingsworth, by letters patent, dated the 3d day of March, 1796, and filed in the cause, and the same described in the report of Surveyor John L. Cole, made and returned in this cause, and laid down on his map or plat accompanying said report, and also filed in this cause, marked (J. L. C.:) beginning at a point where formerly stood an oak and beech, the beginning corner of said tract of land, in a low gap of the ridge between the head of the first branch emptying into Pocatalico, in the lower side, above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above its mouth and on the lower side, which point is designated on the plat aforesaid by the letter "A;"
18 thence running with the lines on said map laid down to the several points on said map designated by the letters B, C, D, E, F, G, H, I, J, K, and thence to the beginning at "A," except the following tracts or parcels of land lying within the boundaries above described, that is to say, a tract of 7,923 acres granted to Thomas A. Taylor by patent bearing date the 16th day of June, 1786, and filed in the papers of this cause; a certain other tract or parcel of land lying on Frogg's creek, a branch of Pocatalico, containing 200 acres, and which was granted to Davis Hubbard by patent bearing date on the 11th day of August, 1828, and filed among the papers of this cause; also a certain other tract or parcel of land, containing seventy acres, lying on the left-hand fork of Pocatalico, and which was granted to Michael Shivedecker, by patent dated the 18th day of August, 1830, and also filed in this cause; also a certain other tract or parcel of land, containing thirty acres, lying on the first right-hand fork of the first left-hand fork of Pocatalico, and which was granted to Diocletian Martin by patent dated the 11th day of January, 1836, and also filed with the papers of this cause; and also a certain other tract or parcel of land lying on the waters of Eighteen Mile creek, containing 160 acres, conveyed by Matthias Bruin to Jonathan Hill, by deed bearing date on the 4th day of June, 1846, in which said deed the said tract is described as a rectangular piece of ground, the house in which said Jonathan Hill resided at the date of said deed being in the centre thereof, and being the same house now occupied by the defendant, Aaron Hill, which deed is also filed with the papers of this cause; and as to all the other plaintiffs in this cause they find against them,

they not having shown themselves entitled to the possession of the premises aforesaid.

And that they further find for the defendants, George Fisher, Thomas Landers, David *alias* Davis Hubbard, and Washington Fisher. Therefore it was considered that the plaintiffs, Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruin, Alexander M. Bruin, and William Pennington, recover against the defendants against whom the verdict aforesaid was rendered the possession of the premises aforesaid, according to the verdict of the jury aforesaid, and their costs by them about their suit in this behalf expended.

And that as to the said defendants, George Fisher, Thomas Landers, David *alias* Davis Hubbard, and Washington Fisher, the plaintiffs, take nothing by their bill nor for their false clamor, and that the said defendants go hence without day and recover against the plaintiffs their costs by them about their defence in this behalf expended.

Memorandum.

On the trial of this cause the defendants tendered a bill of exceptions to opinions of the court delivered on said trial in the following words and figures, to wit:

19 *Bill of exceptions.*

Memorandum.—That on the trial of this cause the plaintiffs having shown a patent from the Commonwealth to Samuel Hollingsworth, dated ———, for the 100,000 acres of land in controversy, and having shown a deed of conveyance for a moiety of the same from said patentee to Jesse Waln and others, and a deed for the other moiety in August, 1799, which patent and deeds are in the words and figures following, to wit:

Patent.

Robert Brooke, esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye that, by virtue of five land office treasury warrants—numbers six hundred and forty, six hundred and forty-one, six hundred and forty-two, six hundred and forty-four, and six hundred and forty-six—all issued the 28th day of August, one thousand seven hundred and ninety-four, there is granted by the said Commonwealth unto Samuel Hollingsworth a certain tract or parcel of land, containing one hundred thousand acres, by survey bearing date the fifteenth day of December, one thousand seven hundred and ninety-four, lying and being in the county of Kanawha, called Jabel tract, between Pocatalico and the 18-mile creek, both being branches of the Great Kanawha river; also on several creeks which empty into said river between Pocatalico and said 18-mile creek, and is bounded as follows, to wit: beginning at a white oak and beech in a low gap of the ridge between the head of the first branch emptying into Pocatalico on the lower side above the mouth thereof and the head of the first left-hand branch of the first large creek that empties into said river above the mouth and on the

lower side; said beginning is about one mile from Kanawha river, and about the same distance from Pocatalico; and running from thence north 45° west, 986 poles, to two small hickories on the side of the river ridge, about 4 poles from the top thereof, crossing waters at the following distances, viz: from said beginning 422 poles to a branch running into Kanawha river; from thence 280 poles to a small creek running into said river, and 284 poles to said hickories; thence north 17° west, 68 poles, to a red oak and ash; thence north 45° west, 122 poles, to a white oak and hickory; north 30° west, 266 poles, to a bunch of sugar trees on the right-hand fork of the first creek emptying into Kanawha river above the Red House shoals; thence north 45° west, 2,090 poles, to a walnut and buckeye on a small fork of 18-mile creek, crossing waters as follows: at 168 poles a branch of the last-mentioned creek, 246 poles further a right-hand fork of Buffalo creek, 348 poles to Buffalo creek, 70 poles a branch of said creek, 186 poles to another branch running out of the survey, 246 poles to a branch of 18-mile creek, 124 poles to another, 228 poles to another, 146 poles to another, and 328 poles to said walnut and buckeye; thence, turning up with the right-hand branches of the 18-mile creek, north 45° east, 2,372 poles, to a hickory and sugar tree on a creek running out of the survey, crossing waters at the following distances from each other, as are marked in the plan, viz: from the said walnut and sugar tree 164 poles, 260 poles, 210 poles, 410 poles, 154 poles, 246 poles, 334 poles, 66 poles, and 266 poles, to said hickory and sugar tree; thence north 75° east, 2,366 poles, to a lynn and sugar tree on a branch of 18-mile creek, crossing waters, noted as before, at 296 poles, at 130 poles, at 200 poles, at 83 poles, at 366 poles, at 360 poles, at 100 poles, at 622 poles, and at 284 poles, to the said lynn and sugar tree; thence south 45° east, 3,518 poles, to three lynns on a branch running into the main left-hand fork of Pocatalico, crossing waters on said line from said lynn and sugar tree at 324 poles, at 220 poles, at 206 poles, at 264 poles, at 214 poles, at 226 poles, at 240 poles, at 266 poles, at 556 poles, at 418 poles, and at 224 poles, to said three lynns on a branch; thence, down said branch, south 5° west, 20 poles, south 10° east, 46 poles, to three beeches on the bank of the main left-hand fork of Pocatalico; thence south 46¼ west, 2,210 poles, to a buckeye and sugar tree on a creek emptying into Pocatalico, crossing waters from said three beeches at 300 poles, at 470 poles, at 415 poles, at 214 poles, at 600 poles, and at 211 poles, to the said buckeye and sugar tree; thence south 73° west, 2,382 poles, crossing waters, as marked in the plan, at 12 poles, at 400 poles, at 280 poles, at 410 poles, at 66 poles, at 294 poles, at 134 poles, at 90 poles, at 110 poles, at 264 poles, and at 332 poles, to the beginning. But it is always to be understood that the survey upon which this grant is founded includes the following prior claims, viz: a survey of 570 acres made for James Hay on a right-hand fork of Eighteen Mile creek, and 720 acres surveyed for said Hay joining his survey of 570 acres, the surveys made the 1st and 2d days of June, 1786; and 600 acres surveyed for Jacob Lock*ett* the 25th of October, 1783; also 500 acres and 300 acres for said Lockhart, surveyed the 27th October, 1783, joining his 400-acre survey—all being on the first left-hand fork of Pocatalico, which is about

2 miles from the mouth of main Pocatalico; and 200 acres of a survey of 571 acres made for James McNutt on Buffalo creek, a branch of *Kenhawa* river, surveyed the 4th day of June, 1785, (exclusive of the above quantity of 100,000 acres;) all of which having a preference by law to the warrants and right upon which this grant is founded, liberty is reserved that the same shall be firm and valid, and may be carried into grant or grants; and this grant shall be no bar, in either law or equity, to the confirmation of titles to the same, as before mentioned and reserved, with its appurtenances: To have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel Hollingsworth (except as before excepted) and his heirs forever.

In witness whereof, the said Robert Brooke, esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth [LESSER SEAL.] to be affixed, at Richmond, on the 3d day of March, in the year of our Lord one thousand seven hundred and ninety-six, and of the Commonwealth the twentieth.

R. BROOKE.

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21 *Deed from Samuel Hollingsworth to Jesse Waln and others.*

This indenture, made the twelfth day of January, in the year of our Lord one thousand seven hundred and ninety-eight, between Samuel Hollingsworth, of the borough of Wilmington, in the State of Dela ware, gentleman, of the one part, and Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, all of the city of Philadelphia, merchants of the other part, witnesseth: that the said Samuel Hollingsworth, as well in consideration of the sum of five shillings to him in hand paid by the said Jesse Waln, Robert Waln, Jehu Hollingsworth, the younger, John Shallcross, Isaac Wharton, and David Lewis, at the time of the execution hereof, the receipt whereof is hereby acknowledged, as for other good causes and considerations him thereunto moving, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, their heirs and assigns, one full, equal, undivided half part, the whole into two equal parts, to be divided off and in the five following tracts of land, to wit:

One certain tract or parcel of land containing fifty-three thousand acres, by survey bearing date the 15th day of December, one thousand seven hundred and ninety-four, lying and being in the county of Kanawha, in the Commonwealth of Virginia, called "Grange tract," which the said Commonwealth of Virginia, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the 2d day of March, one thousand seven hundred and ninety-six, recorded in the land office of Virginia in book No. 34, page 32, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing one hundred thousand acres, by survey bearing date the 15th day of

December, one thousand seven hundred and ninety-four, lying and being in the county and Commonwealth aforesaid, called "Jabel tract," which the said Commonwealth, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the third day of March, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 34, page 37, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing forty-seven thousand acres, by survey bearing date the 2d day of January, one thousand seven hundred and ninety-five, lying and being in the county and Commonwealth aforesaid, called "Sheba," which the said Commonwealth, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the first day of March, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 35, page 19, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing twenty-seven thousand
22 acres, by survey bearing date the seventeenth day of December, one thousand seven hundred and ninety-four, lying and being in the county of Montgomery and Commonwealth aforesaid, called "Spring Brook," which the said Commonwealth of Virginia by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the twenty-fifth day of February, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 35, page 8, granted and conveyed to the said Samuel Hollingsworth in fee simple. And one other certain tract or parcel of land containing seventy-three thousand and thirty-one acres, by survey bearing date the tenth day of December, one thousand seven hundred and ninety-four, lying and being in the counties of Montgomery and Wythe in the Commonwealth aforesaid, the greater thereof in Montgomery, which the said Commonwealth of Virginia, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the twenty-ninth day of February, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 35, page 13, granted and conveyed to the said Samuel Hollingsworth in fee simple, as by the said several recited patents, reference being thereunto had, more fully and at large appears. Together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto or any part or parcel thereof belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and of every part and parcel thereof.

And also all the estate, right, title, and interest whatsoever, both at law and in equity, of him the said Samuel Hollingsworth and his heirs, of, in, to, and out of all and singular the premises hereby granted, and every part and parcel thereof. To have and to hold the said one full, equal, and undivided half part, the whole into two equal parts to be divided off and in the said five several tracts of land hereinbefore mentioned, with the appurtenances, unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac

Wharton, and David Lewis, and to their several and respective heirs and assigns, to his and their proper use and behoof forever as tenants in common, and not as joint tenants.

And the said Samuel Hollingsworth and his heirs, all and singular the premises hereby granted, with the appurtenances, unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, their several and respective heirs and assigns, against himself the said Samuel Hollingsworth and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim by, through, from, or under him, them, or any of them, shall and will warrant and forever defend by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

SAMUEL HOLLINGSWORTH. [SEAL.]

Sealed and delivered in the presence of—
WILL. WHITESIDE.
23 BLAISE CENAR.
HILARY BAKER.

CITY OF PHILADELPHIA, *sct:*

Before me, the subscriber, mayor of the city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Samuel Hollingsworth, of the borough of Wilmington, in the State of Delaware, gentleman, and acknowledged the within written indenture to be his act and deed, and desired the same may be recorded as such according to law.

In testimony whereof, I, the said mayor, have hereunto set my hand, and caused the seal of the mayoralty of said city to [SEAL.] be affixed, at Philadelphia, the thirteenth day of January, in the year of our Lord one thousand seven hundred and ninety eight.

HILARY BAKER, *Mayor.*

KANAWHA COUNTY, *February Court*, 1799.

This deed from Samuel Hollingsworth to Jesse Waln, Robert Waln, John Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis was presented in court, and being duly acknowledged before the mayor of Philadelphia, which this court thinks sufficient testimony, and the same is ordered to be recorded.

A copy. Teste: JOHN REYNOLDS, *Clerk.*

At a court held for the county of Wythe, the 12th day of March, 1799, the within indenture of bargain and sale from Samuel Hollingsworth to Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton and David Lewis was exhibited in court and proved by the certificate of Hilary Baker, mayor of city of Philadelphia, and thereupon it was ordered to be recorded.

Attest: ROBERT CROCKETT, *Clerk.*

Recorded in book 2d, page 314, and exd.

MONTGOMERY, *March Court*, 1799.

This deed of conveyance of lands from Samuel Hollingsworth to Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, together with the certificate of Hilary Baker, mayor of the city of Philadelphia, thereon indorsed, and under his seal of office, certifying the acknowledgment of the same by the said Samuel Hollingsworth, were presented in court, and ordered to be recorded.

A copy. Teste: CHARLES TAYLOR, *Clerk.*

Recorded C, page 180.

24 VIRGINIA, JACKSON COUNTY COURT,
Clerk's Office, March 24, 1857.

This day the foregoing deed from Samuel Hollingsworth to Jesse Waln and others was received in said office, and together with the certificate of acknowledgment thereto annexed was duly admitted to record in said office.

Teste: JAMES GREER,
Clerk Jackson County Court.

Recorded in deed book No. 11, page 582, of Jackson county court.

Deed from Samuel Hollingsworth to Jesse Waln and others.

This indenture, made the twenty-second day of August, in the year of our Lord one thousand seven hundred and ninety-nine, between Samuel Hollingsworth, of the borough of Wilmington, in the State of Delaware, gentleman, of the one part, and Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Warton, and David Lewis, all of the city of Philadelphia, merchants, of the other part, witnesseth: that the said Samuel Hollingsworth, as well in consideration of the sum of five shillings, to him in hand paid by the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Warton, and David Lewis, at the time of the execution hereof, the receipt whereof is hereby acknowledged, as for other good causes and considerations him thereunto moving, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, their heirs and assigns, one full, equal, undivided half part, the whole in two equal parts, to be divided off and in the five following tracts of land, to wit: one certain tract or parcel of land containing fifty-three thousand acres, by survey bearing date the fifteenth day of December, one thousand seven hundred and ninety-four, lying and being in the county of Kanawha, in the Commonwealth of Virginia, called "Grange tract," which the said Commonwealth of Virginia, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the second day of March, one thousand seven hundred and ninety-six, recorded in the

land office of Virginia, in book No. 34, page 32, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing one hundred thousand acres, by survey bearing date the fifteenth day of December, one thousand seven hundred and ninety-four, lying and being in the county and Commonwealth aforesaid, called "Jabel tract," which the said Commonwealth, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the third day of March, one thousand seven hundred and ninety-six, and recorded as aforesaid, in book No. 34, page 37, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing forty-seven thousand acres, by survey bearing date the 2d day of January, one thousand seven hundred and ninety-five, lying and being in the county and Commonwealth aforesaid, called "Sheba," which the said Commonwealth, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the first day of March, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 35, page 19, granted and conveyed to the said Samuel Hollingsworth in fee simple. One other certain tract or parcel of land containing twenty-seven thousand acres, by survey bearing date the seventeenth day of December, one thousand seven hundred and ninety-four, lying and being in the county of Montgomery, and Commonwealth aforesaid, called "Spring Brooke," which the said Commonwealth of Virginia, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the 20th day of February, one thousand seven hundred and ninety-six, and recorded as aforesaid, in book No. 35, page 8, granted and conveyed to the said Samuel Hollingsworth in fee simple. And one other certain tract or parcel of land containing seventy-three thousand and thirty-one acres, by survey bearing date the tenth day of December, one thousand seven hundred and ninety-four, lying and being in the counties of Montgomery and Wythe, in the Commonwealth aforesaid, called "Angel Rest," the greater thereof in Montgomery, which the said Commonwealth of Virginia, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the 29th day of February, one thousand seven hundred and ninety-six, and recorded as aforesaid in book No. 35, page 13, granted and conveyed to the said Samuel Hollingsworth in fee simple, as by the said several recited patents, reference being thereunto had, more fully and at large appears. Together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances, and whatsoever thereunto, or any part or parcel thereof, belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and every part and parcel thereof, and also all the estate, right, title, and interest whatsoever, both at law and in equity, of him the said Samuel Hollingsworth and his heirs, of, in, to, and out of all and singular the premises hereby granted, and every part and parcel thereof. To have and to hold the said one full, equal, and undivided half part, the whole into two

equal parts, to be divided of and in the said five several tracts of land hereinbefore mentioned, with the appurtenances, unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, and to their several and respective heirs and assigns. To his and their proper use and behoof forever, as tenants in common, and not as joint tenants.

And the said Samuel Hollingsworth and his heirs, all and singular the premises hereby granted, with the appurtenances, unto the said Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, their several and respective heirs and assigns, against himself, the said Samuel Hollingsworth and his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim by, through, from, or
26 under him or them, shall and will warrant and forever defend by these presents.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year herein first above written.

SAM'L HOLLINGSWORTH. [SEAL.]

Sealed and delivered in the presence of us—
ABRAM GEST.
ISAAC KENDALL.
WILLIAM MARSHALL.

STATE OF DELAWARE,
Wilmington borough, ss:

Be it known, that on the 22d day of August, in the year of our Lord one thousand seven hundred and ninety-nine, before me, Joseph Warner, esquire, chief burgess of the said borough, personally came and appeared the same Samuel Hollingsworth, who is a party in the deed, he being to me well known, and the said Samuel Hollingsworth acknowledged the above instrument to be his act and deed, and desired that the same may be received and recorded as such.

In testimony whereof, I have hereunto set my hand and affixed the corporation seal of the said borough, the day and year afore-
[SEAL.] said.

JOSEPH WARNER.

VIRGINIA, *to wit:*

At a general court held at the capitol in the city of Richmond, the 15th day of June, 1800, this indenture, together with the certificate from under the hand and seal of Joseph Warner, chief burgess of the borough of Wilmington, in the State of Delaware, thereon indorsed, on the motion of Jesse Waln, Robert Waln, Jehu Hollingsworth, junior, John Shallcross, Isaac Wharton, and David Lewis, parties thereto, was ordered to be recorded.

Teste: WILSON ALLEN, *C. C.*

VIRGINIA, JACKSON COUNTY COURT,
Clerk's Office, March 24, 1857.

This day the foregoing deed was received in said office, with the certificate of acknowledgment thereto annexed, was duly admitted to record in said office.

Teste:
JAMES GREER,
Clerk of Jackson County Court.

Recorded in deed book No 11, page 584.

27 *Bill of exceptions, continued.*

"And the said Waln and others, by deed dated in 1800, conveyed said land to Abijah Dawes. And having also deduced title by regular conveyances from said Jesse Waln and others and Abijah Dawes, to the Delaware Bank and Jehu Hollingsworth and John Shallcross, and from them to Joseph Willard, and from Joseph Willard to Matthias Bruen; which last deed, from Willard to Bruen, is dated April 14, 1815, and is in the words and figures following, to wit:"

Deed.—Joseph Willard and wife to Matthias Bruen.

"This indenture, made the fourteenth day of April, in the year of our Lord one thousand eight hundred and fifteen, between Joseph Willard, of the city and State of New York, gentleman, and Elizabeth, his wife, of the first part, and Matthias Bruen, of the same place, merchant, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to them in hand paid, at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain tract, containing one hundred thousand acres, by survey bearing date the fifteenth day of December, one thousand seven hundred and ninety-four, lying and being in the county of Kenhawa, in the Commonwealth of Virginia, called 'Jabel tract,' which the said Commonwealth, by patent under the hand of Robert Brooke, esquire, governor, and the lesser seal of the said Commonwealth, bearing date the third day of March, one thousand seven hundred and ninety-six, recorded in the land office of Virginia, in book No. 34, page 37; granted and conveyed to Samuel Hollingsworth, of the borough of Wilmington, in the State of Delaware, gentleman, as by the said recited patent, reference being thereunto had, will more fully and at large appear; together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above-mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower, property,

possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their only proper use and behoof forever. And the said Joseph Willard, for himself, his heirs, executors, and administrators, doth covenant, grant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that he,
28 the said Joseph Willard, at the time of the sealing and delivery of these presents, is lawfully seized, in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons, lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever.

"And also, that the said parties of the first part, and their heirs, and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper cost and charges, in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, consequences, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably devised, advised, or required.

"And the said Joseph Willard and his heirs, the above described and hereby granted and released premises, and every part thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

"In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

"J. WILLARD. [SEAL.]
"ELIZABETH WILLARD. [SEAL.]

"Signed, sealed, and delivered in the presence of us—
"DAVID B. OGDEN.
"JNO. FERGUSON.
"JOHN L. MORTON."

29 CITY OF NEW YORK, *ss:*

By John Ferguson, mayor of the city of New York.

It is hereby certified that on the 15th day of April, 1815, personally appeared before me, the said mayor, Joseph Willard and Elizabeth Willard, his wife, satisfactorily proven to me to be the persons mentioned in and who executed the within instrument, who acknowledged that they executed they same as their voluntary acts and deeds for the purposes therein mentioned.

And the said Elizabeth being by me examined, separate and apart from her said husband, did acknowledge that she executed the said instrument as her voluntary act and deed, without any fear or compulsion of her said husband.

In testimony whereof, I have hereunto subscribed my name, and [SEAL.] have caused the seal of said city to be affixed the day and year above written.

JOHN FERGUSON.

KANAWHA COUNTY, CLERK'S OFFICE,
17*th July*, 1815.

This deed of bargain and sale between Joseph Willard and Elizabeth Willard, his wife, of the one part, and Matthias Bruen of the other part, was this day presented for record; and the acknowledgment thereof by the said Joseph and Elizabeth being duly certified, the same is accordingly admitted thereto.

Teste: SAMUEL DRYDEN, *Clerk.*

Bill of exceptions, continued.

"Plaintiffs also further deduced title regularly from said Matthias Bruen to the plaintiffs, in whose favor verdict is rendered in this cause.

And the defendants admit the transmission of the title to said land, from the said patentee, Samuel Hollingsworth, regularly down to the plaintiffs last aforesaid; unless the same was interrupted by the forfeiture of the said land in controversy to the Commonwealth, and the vesting thereof in the president and directors of the literary fund, under the laws of Virginia, as claimed by the defendants.

And the defendants having adduced evidence before the jury tending to prove that for and during the years 1815, 1816, and 1817, and prior thereto, the said tract of land was an unbroken wilderness, un-

inhabited, and in a state of nature, and evidence was offered by the plaintiffs tending to prove otherwise, and upon which tract of land there was no property whereon a distress could have been levied, or out of which the taxes charged thereon could have been made in the said years 1815, '16, and '17, and evidence also offered by the plaintiffs tending to prove the reverse,

And the defendants having further adduced evidence tending to prove that the said Matthias Bruen refused to sell said land or parcels thereof to persons settling or desiring to settle thereon;

And the defendants having further adduced evidence tending to prove that the said tract of land in controversy, on the 14th of November, 1831, lay partly in the counties of Mason, Jackson, and Kanawha, but not more than 30,000 acres thereof in Kanawha; and that before the formation of Jackson county the said tract lay partly in Mason county and partly in Kanawha county—the largest portion in Kanawha.

That it joined another tract of 53,000 acres called "Grange," which was claimed by the said Matthias Bruen, and derived to him by title, same as the tract of 100,000, called "Jabel;" and that about one-tenth of said tract "Grange" only lay in said county of Kanawha, and the residue thereof in the county of Jackson, from the formation of said county, and has so continued ever since, and was so located on the 14th of April, 1831. That the said Matthias Bruen also held and claimed another tract of 47,000 acres, called "Sheba," the title to which he also derived from the same patentee, Samuel Hollingsworth, by similar chain of conveyances.

But the said tract of 47,000 acres called "Sheba" did not join either of the two tracts aforesaid, but came within eighty poles of them, and was entirely separate and apart from them, and from each of them, and lay entirely in the county of Kanawha.

That said three tracts were all in the county of Kanawha at the time the grants issued for them, and were charged uniformly with taxes there, and not elsewhere, before 1831, inclusive.

The defendants further gave evidence tending to prove that the defendants, Caleb King, Charles Clendenin, John J. Brown, D. F. Milam, James Goff, Benjamin Coleman, Henry Hedrick, John Hedrick, James Higginbotham, John Higginbotham, Simeon Kelly, Thomas Kelly, and others, making in all seventy-five defendants, who were residents upon the land in controversy.

The defendants, William Hill and Nathan Casto and Jonathan Pfost, gave in evidence two title bonds—one to Saxton, and the other to Crooks, and one assigned to William Hill, by John Jividen, in 1857, made by Jonas Smith, as agent for Matthias Bruen; and the said William Hill also gave in evidence a deed from said John Jividen to William Hill, dated in 1850, which are in the words and figures following, to wit:

MATTHIAS BRUEN and SAMUEL SAXTON. } Agreement.

"Memorandum of an agreement between Matthias Bruen, esquire, of the city of New York, of the first part, and Samuel Saxton, of the

town of Attica, county of *Jenisee*, and State of New York, of the second part, witnesseth:

First. The said Matthias Bruen, esq., by his attorney, Jonas Smith, sells to the said Samuel Saxton, his heirs or assigns, (reserving all gold and silver mines,) all that certain piece or parcel of land, situate, lying and being in Mason county aforesaid, in the NE. section of the Jabel tract, and in lot No. 10; in breadth twenty chains, and in length fifty chains, and to be so located as to include a log house, standing on the north side of Eighteen Mile creek,
31 which parallelogram is to be surveyed with right angles, and parallel to the lines of the allotment of said NE. section, and to contain one hundred acres of land.

Secondly. The said Samuel Saxton, his heirs, or assigns, shall pay to the said Matthias Bruen, his heirs or assigns, for the said lot of land, two dollars per acre, amounting to two hundred dollars; thirty-five dollars of which to be paid *ame*diately, the remaining one hundred and sixty-five dollars to be paid in six equal and *anuel* payments, with interest, *anu*ally, from the hereof.

Thirdly. The payments being made as aforesaid, the said Matthias Bruen shall give to the said Samuel Saxton, his heirs or assigns, a good and sufficient warranty deed, with covenants of warranty, the same as said Matthias Bruen has received from the Bank of Delaware for said lands.

In witness whereof, the parties to these presents have hereunto set their hands and seals the 21st day of October, 1817.

MATTHIAS BRUEN, [SEAL.]
By his attorney, JONAS SMITH.
SAMUEL SAXTON. [SEAL.]

Sealed and delivered in presence of—
NATHAN SMITH.
PHILO E. JUDD.

October 21st, 1817. Received on the within agreement thirty-five dollars.

MATTHIAS BRUEN,
By his attorney JONAS SMITH.

For value received, I assign the within bond to William Hill, this 9th day of May, 1857.

JOHN GIVIDEN.

Attest:
WOODSON MARTIN.
APOLLO STEPHENS.

Matthias Bruen and William Crook.—Agreement.

"Memorandum of agreement between Matthias Bruen, esquire, of the city of New York, of the first part, and William Crook, of Mason county, State of Virginia, of the second part, witnesseth:

First. The said Matthias Bruen, by his attorney, Jonas Smith, sells to the said William Crook, his heirs or assigns, (reserving all gold and

silver mines,) all that certain piece of land in lot No. 18, in the NE. section of the "Jabel tract," in Mason county, aforesaid, being twenty chains broad, up and down the creek, being the NE. branch of Eighteen Mile creek, and fifty chains long; to be located on any part of said lot No. 18, above a lot of land sold to Samuel Saxton; which said lot lines are to be run parallel to the lines of the subdivision of said NE. section, as allotted into [word obliterated] lots, and to contain one hundred acres of land.

Secondly. The said William Crook, his heirs or assigns, shall pay to the said Matthias Bruen, his heirs or assigns, two hundred dollars for said lot of land, thirty dollars of which to be paid on the date of this agreement, and the remaining one hundred and seventy dollars in six equal and yearly payments from the date hereof, with interest annually.

32 *Thirdly.* The payments being made as aforesaid, the said Matthias Bruen shall give to the said William Crook, his heirs or assigns, a good and sufficient warranty deed, with covenants of warranty, the same as the said Matthias Bruen has received from the Bank of Delaware for said land. In witness whereof the said parties above mentioned have hereunto set their hands and seals the 29th day of October, 1817.

MATTHIAS BRUEN,
By his attorney JONAS SMITH. [SEAL.]
WILLIAM CROOKS. [SEAL.]

Sealed and delivered in presence of—
NEHEMIAH SMITH.
NANCY SMITH.

October 29th, 1817. Received on the within contract thirty dollars.
JONAS SMITH,
For MATTHIAS BRUEN.

John Gividen and Wife to William Hill.—Deed.

"This indenture, made the 10th day of August, 1850, between John Gividen and Alesy his wife, of the county of Putnam and State of Virginia, of the one part, and William Hill, of the same place, of the other part, witnesseth: That whereas the said John Gividen and Alesy his wife, for a valuable consideration, did put the said William Hill in possession of the land he now occupies in Putnam county and State of Virginia, on the Eighteen Mile creek, it being the two tracts of land, with one hundred acres in each, which Jonas Smith, as agent for Matthias Bruen, of New York, surveyed for Messrs. Saxton and Scott, and put them in possession of the same in or about the year 1817; and the said John Gividen, and Alesy his wife, put said Hill in possession of said two hundred acres of land about the year 1832, where he has been in quiet possession until now. And the said land being claimed by no persons, except the above named possessors, since the year 1817:

Now this indenture further witnesseth: that the said John Gividen and Alesy his wife, for and in consideration of the premises, and for the further consideration of the sum of one dollar to them in hand paid by the said William Hill, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell unto the said William Hill the above described two hundred acres of land, lying in a square form, and the boundary lines running nearly north and south, and binding on the land now occupied by William *Adkerson* on the lower part of the survey, and binding on the land formerly occupied by Archibald Gividen on the upper line; to have and to hold the said two hundred acres of land with all and singular the appurtenances to the said William Hill, his heirs and assigns forever.

And the said John Gividen, and Alesy his wife, for themselves and their heirs do agree to and with the said William Hill to warrant and defend the title of said land to the said William Hill, and his heirs or assigns, free from the claim of them, the said John Gividen, and Alesy his wife, and their heirs; but from the claim of no other person or persons whatsoever. In testimony whereof the said John Gividen, and Alesy his wife, have hereunto set their hands and *afixed* their seals, the day and year first in this indenture written.

33

his
JOHN × GIVIDEN. [SEAL.]
mark.

her
ALESY × GIVIDEN. [SEAL.]
mark.

PUTNAM COUNTY, *to wit:*

I, Joab Early, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that John Gividen, whose name is signed to the writing above, bearing date on the 10th day of August, 1850, has acknowledged the same before me, in my county aforesaid.

Given under my hand this 10th day of August, 1850.

J. EARLY, *J. P.*

STATE OF VIRGINIA,
Putnam County, to wit:

We, Joab Earle and Allen Sibrell, justices of the peace for the county aforesaid, do certify that Alesy Gividen, the wife of John Gividen, whose names are signed to the writing above, bearing date on the 10th day of August, 1850, personally appeared before us, in the county aforesaid, and being examined by us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Alesy Gividen, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under our hands this 10th day of August, 1850.

J. EARLY, *J. P.*
ALLEN SIBRELL, *J. P.*

PUTNAM COUNTY COURT, CLERK'S OFFICE, *August 26th*, 1850.

This deed was this day presented in my office, and thereupon, together with the certificates of acknowledgments thereto annexed, is admitted to record.

Teste: H. H. FORBES, *Clerk.*"

Bill of exceptions, continued.

"The same defendants offered evidence tending to prove they had occupied said lands from 1826, and that they had been occupied in 1817, one place by Crooks, the other by Saxton, under their respective title bonds aforesaid, and a part of the time by John Gividen.

The plaintiffs offered evidence tending to prove the occupants claimed no title to the land, and claimed to hold their possession under Bruen. And the defendants offered evidence tending to prove that the occupants had sold their improvements to their respective successors, some of whom, and those under whom they claim and hold respectively, entered on the lands in controversy from fourteen to twenty years, or more, before the institution of this suit, without any
34 privity or contract with the said Matthias Bruen, or those claiming under *them,* they the said last aforementioned defendants, during all that time holding, occupying, and using the same, in several separate parcels, uninterruptedly, in the usual way persons hold, use, and treat their own property, but without any claim or color of title thereto.

And the plaintiffs gave in evidence a number of entries, surveys and patents, of which the following is a list, to wit:"

Entries and surveys in Kanawha county.

Names of defendants.	No. of acres.	Date of entry.	Date of survey.	Remarks.
Preston Trotter, (3)	.....	.....	.....	
H. C. Sisson and D. Shirkey	985	October, 1855	Same day	Re-entered November, 1857.
Silas Carney	500	November 19, 1857.	do.	
John Fisher	438	December 10, 1857.	December 18, 1857.	
B. & Caleb King	200	January 7, 1858	December 15, 1858.	
J. J. Brown, B. P. Byrum, and Robert T. Harvey	770	February 4, 1858	December 9, 1858.	
William B. Sigman	200	September 20, 1858.	December 11, 1858.	
Wm. Smith and Silas Carney	773	December 11, 1858.	December 20, 1859.	
Richard Saunders	200	January 25, 1858	December 17, 1858.	
George B. Rust	500	January 2, 1859	No survey	
John Fisher	150	December 10, 1857.	do.	
McClanahan, Agee, A. & B. Bailey	2,000	December 7, 1857	do.	
W. —— A. Asbury	160	January 25, 1858	December 13, 1858.	
James H. Brown	1,000	December 21, 1858.	Not surveyed	
A. Derrick	310	January 10, 1859	do.	

Entries and surveys in Putnam county.

James Martin	150	July 14, 1859	Not surveyed	
Same, and J. P. & J. F. Lett	730	June 30, 1858	do.	March 11, 1860.
D. S. Montague	200	October 25, 1858	Surveyed	
Andrew Parks	1,013	November 27, 1858.	Not surveyed	
Do.	1,000	April 11, 1860	do.	
John Pfost	292½	December 11, 1854.	December 15, 1854.	Improved; Casto on it.
Milton Shank	145	.....	March 30, 1858	Lived on it.
James Stuart Short and Thompson	448	.....	April 30, 1858	
James Tucker	135	.....	March 29, 1858	Dead.
L. P. Watkins	100	September 25, 1858.	.....	
Arthur Waugh	650	do	.....	
Samuel McGraw & Harvey	400	September 28, 1858.	.....	

Entries and surveys in Putnam county—Continued.

Names of defendants.	No. of acres.	Date of entry.	Date of survey.	Remarks.
Hiram Asbury	100	August 28, 1858		
J. J. Brown, Havey & Byrum	2,000		October 11, 1858	Lives on it.
Silas Carney and Harmon *Wrmes.*	200	April 30, 1859		
James Casey	100	May 17, 1858		Lives on it.
35 William Clendenen	116	January 30, 1858		Lives on land.
Benjamin Coleman	300	November 30, 1854		Do.
Jas. Crago & Harvey	190		October 19, 1858	Lives on survey.
Sarah Crago	200		October 15, 1858	Do.
John Crago	100	May 17, 1858		Lives on entry.
Len C. Fisher	157		January 29, 1858	
Allen W. Harmon	100	October 8, 1858		
Calvin Hart	198	January 29, 1858		Do.
William Harrison	150	July 5, 1859		Do.
Benjamin Hendrick	200	October 8, 1858		Lives on land.
Henry Hendrick	200		July 28, 1858	Do.
Noah H. Hoffman	218		March 31, 1858	
John E. Ray	190		May 22, 1858	
Allen & Thomas Warner	190	March 26, 1856		
James H. Brown	2,000	December 8, 1858		
Benjamin P. Byrum	980		October 9, 1858	
Same, Harvey & Brown. (See Brown.)				
Hale & McMullin	5,938		June 1 and 2, 1858	
A. A. Handley	100	August 30, 1856		Not rendered.
Do	400	June 25, 1856		
Do	100	October 24, 1858		
Jno. A. Harmon	531		March 3, 1857	
Bush W. Harrison	282	December 19, 1854		Rect. Jan. 6, 1857; improved.
Geo. W. Hedrick & H. B. Harvey	400	September 25, 1858		
Robert T. Harvey	100	September 28, 1857		
Hoge, Read, Harvey & McGinnis	800	October 11, 1858		
Richard Snell	400	September 27, 1858		
Thomas H. Harvey	200	October 11, 1858		
John Henson, sr	218		March 30, 1858	Dead.
Jarrett Hill and Samuel P. Stover	200	August 28, 1858		
Jas. Hutchinson & A. A. Handley	150	February 26, 1858		
Samuel H. Jennings	100	June 10, 1858		
Ezekiel Jividen	99			Lives on land.
Joel Jividen				Do.
Thomas Vicars and A. Hill	186		November 11, 1856	
Elisha M. Melton	1,800		October 15, 1858	
Do	500	September 18, 1858		
William Fisher, sr	200	March 25, 1844	October 24, 1844	Crew, place.
Do	150	May 14, 1857	December 15, 1854, and May 14, 1857.	First run of Lemuel.
Do	102	do.	May 27, 1857	
36 George S. Miller	225½	May 26, 1857, (in 2 parcels.)	May 26, 1857	Joins his farm.
Dryden, Noah Dawson, and Jno. M. Fisher.	759	October 2, 1857	March 19 and 20, 1858.	
Do. (in 2 parcels.)	1,330	January 26, 1857	September 23, 1857.	
G. W. & L. L. Cotteral, and John Pfost.	100	February 5, 1857	March 17, 1858	
G. W. & L. L. Cotteral	95	do.	March 16, 1858	
Preston S. Trotter	966	January 18, 1858, July 30, 1859.	December 7, 9, and 10, 1858.	
Do	2,100	December 1, 1846, and May 27, 1847.	May 27, 1847	
Harvey & Tapley Gaines	393	January 23, 1858	January 20, 1859	
George W. Cotteral	150	March 19 and July 14, 1858.	January 19, 1859	Dead.
Preston S. Trotter	150	December 14, 1858.	do.	
C. M. Boswell	150	June 13, 1857	March 17, 1858, and Jan. 13, 1859.	
Charles Carney and A. Waugh	800	January 18, 1858	Jan. 13 & 15, 1859	
Wash. A. Parsons	300	January 13, 1859	do.	
P. Trotter and R. Harrison	1,040	January 15, 1859, Feb. 22, 1860.	February 22, 1860	
Len S. Fisher	100	November 20, 1857	October 19, 1858	
John Shamblin	100	June 5, 1859	do.	

Bill of Exceptions, continued.

"Also the three judgments of Kanawha county court, exonerating said law."

NOTE.—These three judgments will be found copied and inserted in this record, on pages 41, 42, 43 and 44, which see.

"Also the entries in the four auditors' lists of lands exonerated, &c., as follows:"

"A list of lands exonerated in Kanawha county."

Names of persons in whose favor lands are exonerated.	Name of original owners.	Number of acres.	For what years exonerated.	Total am't of tax, &c.	Location.	For what years delinquent since 1790.	Total am't of tax.	Remarks.
Matthias Bruen.....	Matthias Bruen..	100,000	1816, 1817, 1818, 1819, and 1820	$522 50	On the waters of Pocatalico and Kanawha.	1821 to 1831, (inclusive)	$90 00	The county court of Kanawha exonerated this tract from all taxes due prior to 1st January, 1821, whether standing in the name of Matthias Bruen or Delaware Bank, J. Hollingsworth, and John Shallcross, to whom it is charged for the year 1815.
Do	.....do.....	53,000	..... 1817, 1818, 1819, and 1820	209 37	On the waters of Pocatalico, called Grange tract.	1821 to 1831, (inclusive)	47 70	The county court of Kanawha exonerated this tract from all taxes due prior to 1st January, 1821, whether standing in the name of Matthias Bruen or the directors of the Delaware Bank, as a tract of 50,000 acres, returned for 1805 to 1814, inclusive; or in the names of John Hollingsworth and John Shallcross, as 50,000, and returned for 1805, '06, '09, to '14, inclusive; or in the name of Samuel Hollingsworth for the same quantity and years; or in the names of Joseph and J. and R. Willard, as 53,000 acres, and delinquent for 1816.
Do.....	.....do.....	47,000	..... 1817, 1818, 1819, and 1820	185 67	On waters of Elk..	1821 to 1831, (inclusive)	42 20	The county court of Kanawha exonerated this tract from all taxes due prior to 1st January, 1821, whether standing in the name of Matthias Bruen or in the names of Joseph

							and J. and R. Willard, to whom it stands charged for the year 1816. The taxes on the above three tracts are still due for the years 1821 to 1831, inclusive.

The following is a copy of the certificate at the foot of said list, to wit :

"I do certify that the foregoing is a list of lands returned delinquent for non-payment of taxes in the county of Kanawha, and exonerated by the court of that county, pursuant to the act passed 1st April, 1831, entitled 'An act concerning lands returned delinquent for non-payment of taxes, and making disposition of certain lands so delinquent, and of certain escheated lands, for the benefit of actual and *bona fide* holders thereof under grants from the Commonwealth.'"

Given under my hand, at the auditor's office, this 16th July, 1832.

JAS. E. HEATH, *Auditor Public Accounts.*

The following lands have been exonerated since the 1st of April, 1831:

Name of delinquent.	No. of acres.	Location of land, &c.	For what years exonerated.
Matthias Bruen.....	100,000	.....	On the motion of Matthias Bruen, the county court of Kanawha county exonerated this tract from the taxes due for the years 1816 to 1820, inclusive.
Matthias Bruen.....	53,000	On waters of Pocatalico, called "Grange".....	Same entry as the above.
Matthias Bruen.....	47,000	On the waters of Elk	Same entry as the above.
Matthias Bruen.....	53,000	On waters of Pocatalico, called "Grange tract".	On the motion of Matthias Bruen, the county court of Kanawha exonerated this tract from the taxes due for the years 1821 to 1831, inclusive.
Matthias Bruen.....	47,000	On the waters of Elk.....	Same entry as the above.
Matthias Bruen.....	1,000	....	Same entry as the above.
Delaware Bank,(directors of)	50,000	On the waters of Elk and Pocatalico rivers.....	On the motion of Matthias Bruen, the county court of Kanawha exonerated this tract from all taxes due prior to 1815.
Delaware Bank, J. Hollingsworth, and Jno. Shallcross.	100,000	On the waters of Pocatalico and Kanawha	Same entry as the above, but exonerated for 1815.
John Hollingsworth and J. Shallcross.	50,000	.....	On the motion of Matthias Bruen, the county court of Kanawha exonerated this tract from all taxes due prior to 1815.
Samuel Hollingsworth.....	50,000	.....	On the motion of Matthias Bruen, the county court of Kanawha exonerated this tract from all taxes due prior to 1815.
Willard, Joseph, and J. and R	47,000	On waters of Elk, called Sheba	On the motion of Matthias Bruen, the county court of Kanawha exonerated this tract from the tax due for the year 181–.
Willard, Joseph, and J. and R.	53,000	On waters of Pocatalico, called Grange	Same entry as the above.

"The tract of 10,899 acres, returned for 1819 in the name of John Carrell, is also delinquent for the same year in the name of J. B. Walback, (which name see,) who was in 1819, and is now, the owner of said tract; the tax charged in Carrell's name is therefore released by virtue of the authority vested in me by the act of December, 1831.

(Signed.) "JAS. E. HEATH, *Auditor.*"

The following is a copy of the certificate at the foot of said list, to wit:

"The foregoing is a list of all the lands and lots that have been exonerated by the county court of Kanawha and released by the auditor.

"Given under my hand, at the auditor's office, Richmond, this 15th day of November, 1838.

"JAS. E. HEATH, *Auditor.*"

A list of lands in Kanawha county exonerated by the county court since April 1, 1831.

In whose name delinquent.	No. of acres.	Local description of the land.	For what years exonerated.
Bruin, Matthias	100,000		On the motion of Matthias Bruin, the county court of Kanawha exonerated this tract from the taxes due for the years 1816-'17-'18-'19-'20-'21-'22-'23-'24-'25-'26-'27-'28-'29 '30, and '31.
Do	53,000	On waters of Pocatalico, called "Grange tract"	Same entry as the above.
Do	47,000	On the waters of Elk	Same entry as the above.
Delaware Bank, (directors of)	50,000	On the waters of Elk and Pocatalico rivers	On the motion of Matthias Bruin, the county court of Kanawha exonerated this tract from all taxes due prior to 1815.
Delaware Bank, J. Hollingsworth, and J. Shallcross.	100,000	On the waters of Pocatalico and Kanawha	Same entry as above, but for the year 1815.
Hollingsworth, John, and J. Shallcross	50,000		On the motion of Matthias Bruin, the county court of Kanawha exonerated this tract from all taxes due prior to 1815.
Hollingsworth, Samuel	50,000		Same entry as the above.
Willard, Joseph and J. & R.	47,000	On the waters of Pocatalico, called "Grange"	On the motion of Matthias Bruin, the county court of Kanawha exonerated this tract from the tax due for the year 1816.
Do	53,600		Same entry as the above.

(Signed) JAMES E. HEATH, *Auditor of Public Accounts.*

The following is a list of all payments made into the treasury on redemption of delinquent lands since the earliest period to October 1, 1838.

In whose name payments have been made.	Number of acres.	Location of land.	When redeemed.	Amount paid in redemption.	For what years redeemed.	Remarks.
Waln, Jesse, and others	100,000		March 9, 1805	$396 40	1799 to 1802, inclusive	Paid by Bank of Delaware.

Given under my hand, at the auditor's office, Richmond, this 15th day of November, 1838.

JAMES E. HEATH, *Auditor.*

40 CAPTION TO LIST.

A list of lands forfeited for non-payment of taxes in the county of Kanawha, prepared by the auditor in pursuance of the 7th section of the act concerning western land titles, passed March 15, 1838. *The following tracts of land, standing in different names on the printed list, and numbered from* 1 *to* 331, *are delinquent; the residue are either transferred to other counties, released by law, exonerated, or paid.*

No.	Names.	No. of acres.	Remarks, &c.
303	Waller, Jesse, *et al.*.....	100,000	

Certificate appended to the above list.

"The foregoing list, from No. 1 to 331, inclusive, is a list of lands forfeited to the president and directors of the literary fund, and has been prepared in pursuance of the 7th section of the act passed 15th March, 1838. The printed list to which it refers will show the yearly tax on each tract, and the amount for which said lands are forfeited.

"Given under my hand, at the auditor's office, Richmond, this —— day of ———, 1838."

Then the following caption to another list attached to the one preceding:

"The following tracts have been returned delinquent in Kanawha since 1821, and are forfeited for the non-payment of the taxes due thereon."

To which last list is appended the following certificate:

Auditor's certificate.

"The foregoing is a list of lands forfeited to the president and directors of the literary fund, other than those contained in the printed list, and has been prepared in pursuance of the 7th section of the act passed 15th March, 1838.

"Given under my hand, at the auditor's office, Richmond, this 15th day of November, 1838.

(Signed) "JAS. E. HEATH, *Aud.*"

41 And the defendants having offered in evidence the record of the county court rendering the judgments offered in evidence by the plaintiffs, showing who were the magistrates sitting, and who signed the order, viz: Daniel Ruffner, and also offered in evidence the commissions of said magistrates; which records and commissions are in the following words and figures, to wit:

Records of the county court.

At a county court held for Kanawha county, at the court-house thereof, on Monday, the 14th day of November, 1831. Present:

David Ruffner, Andrew Donnally, John Slack, and James C. McFarland, gentlemen, justices, &c., and also Andrew Parks and Daniel Ruffner, gentlemen, justices, &c.

Order.

This day came Matthias Bruen, formerly of the State of New York, and now of Perth Amboy, New Jersey, having title to three several tracts or parcels of land lying and being mainly in the county of Kanawha, that is to say: To one tract or parcel containing one hundred thousand acres, lying partly in the county of Mason and partly in the county of Kanawha; to one other tract containing fifty-three thousand acres, and one other tract containing forty-seven thousand acres, the said several tracts of land being the same charged in the name of the said Matthias Bruen, in the list of lands and lots returned delinquent in Kanawha county for the non-payment of taxes for the year 1820, and prior thereto; in which said list the said tract of 53,000 acres is described as lying on "the waters of Pocatalico, and called Grange tract;" and the said tract of 47,000 is described as lying on "the waters of Elk;" the said tract of 100,000 acres being also the same charged in said lists of lands and lots to the Bank of Delaware, J. Hollingsworth, and John Shallcross, and therein described as lying on the waters of Pocatalico and Kanawha, and returned delinquent in said names for the year 1815; and the said tract of 53,000 acres being the same tract charged in said lists to the directors of the Bank of Delaware as a tract of 50,000 acres, and in their names returned delinquent for the years 1805, 1806, 1809, 1810, 1811, 1812, 1813, and 1814, and is the same also charged to Jno. Hollingsworth and Jno. Shallcross, and is returned delinquent in their names for the same years as last above mentioned, which said tract is also charged in said lists to Joseph J. and R. Willard as a tract of 53,000 acres, and is returned delinquent in their names for the year 1816. The said tract of 47,000 acres, so claimed and owned by the said Matthias Bruen, and in his name returned delinquent, as above set out, being the same also charged in said lists to Samuel Hollingsworth as a tract of 50,000 acres, and in his name returned delinquent for the non-payment of taxes for the years 1805, 1806, 1809, 1810, 1811, 1812, 1813, and 1814; and is the same again charged in said lists to Joseph J. and R. Willard as a tract of 47,000 acres "on the waters of Elk, called 'Sheba,'" and is in their names returned delinquent for the non-payment of taxes for the year 1816, the said several tracts
42 of land being charged for the periods aforesaid to the said Matthias Bruen, to the directors of the "Bank of Delaware," to "the Delaware Bank, J. Hollingsworth, and John Shallcross," to Samuel Hollingsworth, John Hollingsworth, and John Shallcross, and to Joseph J. and R. Willard, respectively, and returned delinquent for the non-payment of taxes in their separate names, as above set out. And the said Matthias Bruen having proved by evidence satisfactory to this court that prior to the passage of the act entitled "An act concerning lands returned delinquent for the non-payment of taxes, and making disposition of certain lands so delinquent, and of certain

escheated lands, for the benefit of actual *bona fide* holders thereof under grants from the Commonwealth," passed April 1, 1831, he was a *bona fide* purchaser of said several tracts of land, and of each of them, so returned delinquent for the non-payment of taxes in the several names above mentioned, and that he has a deed or deeds which was or were duly recorded in the clerk's office of the county court of Kanawha county previous to the passage of the aforesaid act; and that he has paid all the purchase money therefor, having no portion thereof in his hands to satisfy and pay the taxes and damages in arrear and unpaid at the date of his purchase, or any part thereof; and further, that he is in legal possession of the several tracts of land, and was so in possession at the time of the passage of the act before recited.

Therefore this court, in the presence of the attorney prosecuting the pleas of the Commonwealth in said court, who hath appeared and defended this application, upon full consideration of all the matters and things on either side alleged, doth render judgment in favor of the said Matthias Bruen, and doth order, adjudge and decree, that the said several tracts or parcels of land above mentioned, and each and every of them, be released, discharged, and exonerated from all the arrears of taxes and the damages charged or chargeable thereon anterior to the 14th of April, 1815, the date of the purchase thereof by the said Matthias Bruen, whether the same be charged in the name of the directors of the "Delaware Bank," in the name of the Delaware Bank, J. Hollingsworth, and Jno. Shallcross, in that of Samuel Hollingsworth, Jno. Hollingsworth, and John Shallcross, or in the name of Joseph J. and R. Willard, or either of them, or of any other person or persons whatsoever.

And the said Matthias Bruen having further proved by evidence satisfactory to this court that during all the years 1815–'16–'17–'18–'19 and 1820, the years for which the said several tracts are charged to the said Matthias Bruen, and in his name returned delinquent for the non-payment of taxes, there was sufficient property whereon the sheriff or collector might have made distress, and out of which the said taxes for the said several years might have been made and collected. Thereupon this court, in the presence of the attorney prosecuting the pleas of the Commonwealth in the said court, who hath also appeared and defended this application, upon full consideration of all the matters and things on either side alleged, doth further adjudge, order and decree, that the said several tracts of land, and each and every
43 of them, be released, discharged, and exonerated from all the arrears of taxes and the damages charged or chargeable thereon for the said several years 1815–'16–'17–'18–'19 and 1820, whether the same be charged to the said Matthias Bruen or to any other person or persons whatsoever; all of which is ordered to be certified according to the act of assembly in that case made and provided.

At the close of the proceedings of that day the following order was made:

"*Ordered*, That this court be adjourned until to-morrow morning, 9 o'clock.

(Signed) "DANIEL RUFFNER."

"Copy. Teste: A. W. QUARRIER, *Clerk*."

Records of the county court.

At a county court continued and held for Kanawha county, at the court-house thereof, on Tuesday, the 13th day of December, 1831. Present: Andrew Donnally, Thomas Matthews, Andrew Parks, Levi Welch, and James C. McFarland, gentlemen, justices, &c.

Order.

It appearing to the satisfaction of the court that at the last November term thereof, on the motion of Matthias Bruen to exonerate three several tracts of land from the arrears of taxes and the damages thereon, it was proven by evidence satisfactory to the court, that there was sufficient property on the premises aforesaid whereon the collector might have made distress, and out of which the said taxes for the years therein mentioned might have been paid; and that the same was ordered to be recorded and certified, but in entering said order the clerk omitted to insert the words "on the premises," by reason whereof the said order was materially defective. Whereupon, on the motion of the said Matthias Bruen, it is ordered that the said words "on the premises" be now inserted, whereby it shall appear there was sufficient property on the premises aforesaid on which the collector might have made distress as aforesaid; and that this order be certified to the auditor of public accounts to be used in connexion with the order of the last November term.

At the close of the proceedings of that day this order was made:

"*Ordered*, That the court be adjourned till the court in course.

(Signed) "THOS. MATTHEWS."

"Copy. Teste: A. W. QUARRIER, *Clerk*."

Records of the county court.

At a court of quarter sessions held for Kanawha county the 12th day of November, 1832, at the court-house of said county. Present: David Ruffner, Andrew Donnally, James B. Rust, Thomas Matthews, and Lewis Ruffner, gentlemen, justices, &c.

Order.

This day came Matthias Bruen, having the legal title to and possession of three several tracts or parcels of land, each of which is contained in the auditor's list of lands returned delinquent in Kanawha county, from the year 1821 to the year 1831, inclusive; the first containing fifty-three thousand acres, lying on the waters of Pocatalico, called "Grange;" the second containing 47,000 acres, lying
44 on the waters of Elk, called "Sheba," and the third containing 100,000 acres, called "Jabel;" the said several tracts of land being returned delinquent for the non-payment of taxes for the several years aforesaid, but not heretofore vested in the president and

directors of the literary fund. And the said Matthias Bruen having shown by evidence satisfactory to the court, that in the years for which said tracts of land are so returned delinquent, and in each of said years, there was sufficient property on each of said several tracts, whereon the said sheriff or collector might have made distress, and out of which he might have collected the taxes due or chargeable thereon, for the several years aforesaid.

Thereupon this court, in the presence of Matthew Dunbar, esqr., the attorney for the Commonwealth in said court, who hath appeared and defended her interests in the premises, doth adjudge, order and decree, that the taxes charged on the said several tracts of land for the years aforesaid, as set out in the said list of delinquent lands furnished by the auditor of public accounts, together with the damages thereon charged or chargeable, be released, exonerated, and forever discharged. And that the said Matthias Bruen do hold the said several tracts of land, and each of them, free and acquit from the taxes and damages charged thereon for the years 1821,' 22,' 23,' 24, 25,' 26,' 27, 28,' 29,'30, and 1831, inclusive. All of which is ordered to be certified to the auditor of public accounts, according to the act of assembly in that case made and provided.

At the close of that day's proceedings appears the following order:

"*Ordered*, That this court be adjourned until to-morrow morning, 10 o'clock.

(Signed) "DAVID RUFFNER."

"Copy Teste: A. W. QUARRIER, *Clerk.*"

Commission to David Ruffner and others.

"The Commonwealth of Virginia to all persons to whom these presents shall come, greeting:

"Know ye that our governor, on recommendation from the court of the county of Kanawha, hath, with the advice of our council of State, constituted and appointed David Ruffner, Joseph Ruffner, junior, David Milburn, William Owens, and Charles Donnally, gentlemen, justices of the peace in and for said county, in addition to those now holding that office, with authority as well to execute, within the limits of the said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said county.

"In testimony whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness, James Woods, esq., our said governor, at Richmond, on the eighth [SEAL.] day of December, in the year of our Lord one thousand seven hundred and ninety-six, and the Commonwealth the twenty-first.

"JAMES WOOD."

"Copy. Teste: A. W. QUARRIER, *Clerk.*"

45 *Commission to John Reynolds, Daniel Ruffner and Robert Tilsan.*

"The Commonwealth of Virginia to all persons to whom these presents shall come, greeting:

"Know ye that our governor, on recommendation from the court of the county of Kanawha, hath, with the advice of our council of State, constituted and appointed John Reynolds, Daniel Ruffner and Robert Filsan, justices of the peace in and for the said county, in addition to those now holding that office, with authority as well to execute, within the limits of the said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said county.

"In testimony whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness, John Tyler, esquire, our said governor, at Richmond, on the 15th day of May, in the year of our Lord one thousand eight hundred and nine, and the Commonwealth the thirty-third.

[SEAL.]

"JOHN TYLER."

"Copy. Teste: A. W. QUARRIER, *Clerk.*"

Commission to Andrew Donnally and others.

"The Commonwealth of Virginia to all to whom these presents shall come, greeting:

"Know ye that our governor, in pursuance with the advice of our council of State, hath constituted and appointed Andrew Donnally, junior, William F. Styles, John Warth and Robert Lauriston, gentlemen, justices of the peace in and for the county of Kanawha, with authority as well to execute, within the limits of said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said county.

"In witness whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness, James Barbour, esquire, our said governor, at Richmond, on the 20th day of December, in the year of our Lord one thousand eight hundred and thirteen, and thirty-eighth of the Commonwealth.

[SEAL.]

"JAMES BARBOUR."

A copy. Teste: A. W. QUARRIER, *Clerk.*

(Duplicate.)

Commission to Alexander Quarrier, Thomas Matthews, and others.

"The Commonwealth of Virginia to all persons to whom these presents shall come, greeting:

"Know ye that our governor, on recommendation from the court of the county of Kanawha, hath, with advice of our council of State, constituted and appointed Alexander Quarrier, Thomas S. Buster, Joel Shrewsbury, Andrew Johnson, William Grant, James Wilson, William Steele and Thomas Matthews, justices of the peace in and for the said county of Kanawha, in addition to those now holding that

office, with authority as well to execute, within the limits of the said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said town and corporation.

"In testimony whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness, Wilson C. Nicholas, esquire, our said governor, at Richmond, [SEAL.] 46 on the eighteenth day of December, in the year of our Lord one thousand eight hundred and fifteen, and the Commonwealth the fortieth.

(Signed) "WILLIAM C. NICHOLAS."

"Copy. Teste: A. W. QUARRIER, *Clerk.*"

(Attest:) WILLIAM ROBERTSON, C. C.

Commission to John Span and John Slack.

"The Commonwealth of Virginia to all to whom these present letters shall come, greeting:

"Know ye that our governor, on recommendation from the court of the county of Kanawha, hath, with the advice of our council of State, constituted and appointed John Span and John Slack justices of the peace in and for the said county of Kanawha, in addition to those now holding that office, with authority as well to execute, within the limits of the said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said county.

"In testimony whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness, Thomas M. Randolph, our said governor, at Richmond, on the 22d day [SEAL.] of September, in the year of our Lord one thousand eight hundred and twenty-one, and of the Commonwealth the forty-sixth.

"THOMAS M. RANDOLPH."

"Copy. Teste: A. W. QUARRIER, *Clerk.*"

Commission to Levi Welch and others.

"The Commonwealth of Virginia to all to whom these presents shall come, greeting:

"Know ye that our lieutenant governor, (acting in the absence of the governor,) on recommendation from the court of the county of Kanawha, hath, with the advice of our council of State, constituted and appointed Levi Welch, James Henry Fry and James C. McFarland, justices of the peace in and for the said county of Kanawha, in addition to those now holding that office, with authority as well to execute, within the limits of the said county, the other duties of the said office, prescribed by law, as to be of any court to be held for the said county.

"In testimony whereof, these our letters are sealed with the seal of the Commonwealth, and made patent. Witness Peter V. Daniel, our said lieutenant governor, at Richmond, on the [SEAL.] nineteenth day of May, in the year of our Lord one thousand eight hundred and twenty-six, and of the Commonwealth the fiftieth.

"PETER V. DANIEL."

"Copy. Teste: "A. W. QUARRIER, *Clerk.*"

47 *Qualification of David Ruffner and others.*

"At a county court held for Kanawha county on the 3d day of April, 1797, a commission from James Wood, esq., governor of the Commonwealth of Virginia, appointing David Ruffner, Joseph Ruffner, David Milburn, William Owens, and Charles Donnally, gentlemen, justices of the peace in and for the county of Kanawha, who took the oath to support the Constitution of the United States, and the other oaths prescribed by law.

Copy. Teste: "A. W. QUARRIER, *Clerk.*"

Qualification of Daniel Ruffner.

"At a county court continued and held for Kanawha county the 18th day of June, 1809, a commission from his excellency John Tyler, esq., governor of this Commonwealth, was produced, appointing Daniel Ruffner, gentleman, a justice of the peace for the county of Kanawha; whereupon he came into court and qualified according to law; whereupon he took his seat.

Copy. Teste: "A. W. QUARRIER, *Clerk.*"

Qualification of Andrew Donnally, jr., and John Warth.

"At a county court held for Kanawha county the 8th day of February, 1814, Andrew Donnally, jr., and John Warth, who hath been appointed justices of the peace for the county of Kanawha, by commission from under the hand of James Barbour, esq., governor of this Commonwealth, with the seal of the Commonwealth thereto affixed, this day appeared in court and took the oath to support the Constitution of the United States, the oath of fidelity to the Commonwealth, the oath to suppress duelling, and the several oaths of office.

A copy. Teste: "A. W. QUARRIER, *Clerk.*"

Qualification of Thomas Matthews and others.

"At a county court held for Kanawha county on Tuesday, the 11th day of March, 1817, Thomas S. Buster, Joel Shrewsbury, Andrew Johnson, William Grant, James Wilson, William Steele, and Thomas Matthews, who have been appointed justices of the peace for the county of Kanawha, by commission from under the hand of

Wilson C. Nicholas, esq., governor of this Commonwealth, with the seal of the Commonwealth thereto affixed, this day appeared in court and severally took the oath of fidelity to the Commonwealth, the several oaths of office, the oath to suppress duelling, and the oath to support the Constitution of the United States.

Copy. Teste: "A. W. QUARRIER, *Clerk.*"

Qualification of John Slack.

"At a county court held for Kanawha county on Monday, the 8th day of October, 1821, a commission from under the hand
48 of Thomas M. Randolph, esquire, governor of the Commonwealth of Virginia, appointing John Spar and John Slack justices of the peace for Randolph county, was this day presented in court; whereupon the said John Slack came into court and took the oath of a citizen, the oath of office, the oath against duelling, and the the oath to support the Constitution of the United States.

Copy. Teste: "A. W. QUARRIER, *Clerk.*"

Qualification of Levi Welch and others.

At a county court held for Kanawha county on Monday, the 12th day of June, 1826, a commission from under the hand and seal of Peter V. Daniel, esquire, lieutenant governor of this Commonwealth, appointing Levi Welch, James H. Fry, and James C. McFarland, gentlemen, justices of the peace in and for the county of Kanawha, was this day presented in court; and thereupon the said Levi Welch, James H. Fry, and James C. McFarland came into court and severally took the oath to support the Constitution of the United States, the oath of a citizen of this Commonwealth, the oath against duelling, the oath of a justice of the peace, and the oath of justices of the peace; and thereupon they took their seats.

Copy. Teste: A. W. QUARRIER, *Clerk.*

Bill of exceptions, continued.

"The defendants further gave in evidence the auditor's printed lists of delinquent lands, containing the following entries, to wit:"

49 *A list of lands and lots returned as delinquent in Kanawha county for the non-payment of taxes for* 1820, *and prior thereto, and which are redeemable on or before the* 1st *day of January,* 1832; *made out in conformity to an act of the general assembly passed the* 1st *day of April,* 1831.

Names returned on the delinquent list.	Residence.	Number of acres.	Local description of the land.	Distance and bearing from the court-house.	Years returned delinquent, and amount of taxes for each year.								Total am't of tax on each tract.	Remarks.
					Years.	*Amount*	*Years.*	*Amount.*	*Years.*	*Amount.*	*Years.*	*Amount.*		
Matthias Bruen.....	New York..	100,000	.....	.....	1816	$127 50	1817	$127 50	1818	$127 50	1819	$127 50	$522 50	
					1820	12 59	.....	.....	.....	.....	.....	.....		
Matthias Bruen.....	New York..	53,000	On waters of Pocatalico, called "Grange tract."	Northwest 14 miles.	1817	67 58	1818	67 58	1819	67 58	1820	6 63	209 37	Transferred from Joseph Willard.
Matthias Bruen.....	New York .	47,000	On waters of Elk.....	Northeast 1 mile...	1817	59 93	1818	59 93	1819	59 93	1820	5 88	185 67	Transferred from Joseph Willard.
Directors of the Delaware Bank.	.....	50,000	On waters of Elk and Pocatalico rivers.	.....	1805	40 80	1806	40 80	1809	40 80	1810	40 80	371 45	
					1811	40 80	1812	40 80	1813	54 40	1814	72 25		
Delaware Bank, J. Hollingsworth, and John Shallcross.	. .. .	100,000	On waters of Pocatalico and Kanawha.	.....	1815	144 50	.....	.....	.....	.....	.....	.....	144 50	
Samuel Hollingsworth ..	.....	50,000	.....	.....	1805	40 80	1806	40 80	1809	40 80	1810	40 80	371 45	
					1811	40 80	1812	40 80	1813	54 40	1814	72 25		
John Hollingsworth and John Shallcross.	....	50,000	.....	.....	1805	40 80	1806	40 80	1809	40 80	1810	40 80	371 45	
					1811	40 80	1812	40 80	1813	54 40	1814	72 25		
No. 303. Waller, Jesse, and *al.*	.....	100,000	.....	....	1803	81 60	1804	81 60	1805	81 60	1806	81 60	906 10	
					1809	81 60	1810	81 60	1811	81 60	1812	81 60		
					1813	108 80	1814	144 50	.....	.....	.....	.....		
Willard, Joseph, and J. and R.	....	53,000	On waters of Pocatalico, called "Grange."	Northwest 14 miles.	1816	67 58	.....	.....	.....	.....	.....	.....	67 58	
Willard, Joseph, and J. and R.	.....	47,000	On waters of Elk, called "Sheba."	Northwest 1 mile.	1816	59 93	.....	.... ..	.....	.....	.....	.....	59 93	

Certificate appended to the above list:

"I do hereby certify that the foregoing lists of lands and lots returned as delinquent for the non-payment of taxes in the county of Kanawha for the year 1820, and prior thereto, is compiled from the delinquent land lists in the auditor's office, pursuant to the act entitled 'An act concerning lands returned delinquent for non-payment of taxes, and making disposition of certain lands so delinquent, and of certain escheated lands, for the benefit of actual and *bona fide* holders thereof under grants from the Commonwealth,' passed the 1st of April, 1831. I further certify that the lands and lots in the said lists contained are redeemable on or before the 1st day of January, 1832. Given under my hand, at the auditor's office of Virginia, this 24th day of August, 1831.

"JAMES E. HEATH, *Auditor of Public Accounts.*"

50 *A list of lands returned as delinquent in Kanawha county, Virginia, from* 1821 *to* 1831, *inclusive, on which the taxes, exclusive of damages, exceed* $10 *on each tract, and which are redeemable on or before the* 1st *day of April,* 1834*; made out in conformity to the act of the general assembly, passed on the* 1st *of April,* 1831, *and subsequent acts.*

Names returned on the delinquent lists.	Residence.	Number of acres.	Local description of land.	Distance and bearing from court-house.	Years returned delinquent, and amount of taxes for each year.								Total am't of taxes on each tract.	Remarks.
					Years.	*Amount*	*Years.*	*Amount.*	*Years.*	*Amount.*	*Years*	*Amount*		
Matthias Bruen.....	New York..	53,000	Waters of Pocatalico, called "Grange."	Northwest 14 miles.	1821	$4 77	1822	$4 77	1823	$4 24	1824	$4 24	$47 70	
					1825	4 24	1826	4 24	1827	4 24	1828	4 24		
					1829	4 24	1830	4 24	1831	4 24	.....	.....		
Matthias Bruen.....	New York..	47,000	Waters of Elk, called "Sheba."	Northeast 1 mile ..	1821	4 23	1822	4 23	1823	3 76	1824	3 76	42 20	
					1825	3 76	1826	3 76	1827	3 76	1828	3 76		
					1829	3 76	1830	3 76	1831	3 76	.....	.....		
Matthias Bruen.	New York..	100,000	Kanawha county, called "Jabel."	.....	1821	9 00	1822	9 00	1823	8 00	1824	8 00	90 00	
					1825	8 00	1826	8 00	1827	8 00	1828	8 00		
					1829	8 00	1830	8 00	1831	8 00	.....	.....		

Certificate appended to the above list:

I do hereby certify that the foregoing list of lands returned as delinquent for the non-payment of taxes in the county of Kanawha from the year 1821 to the year 1831, inclusive, is compiled from the delinquent land lists in the auditor's office, pursuant to the act entitled "An act concerning lands returned delinquent for the non-payment of taxes, and making disposition of certain lands so delinquent, and of certain escheated lands, for the benefit of actual and *bona fide* holders thereof under grants from the Commonwealth," passed 1st of April, 1831, and subsequent acts on the same subject, after omitting, as required by law, all lands the taxes whereon do not exceed ten dollars on each tract. I do further certify that the lands in the said list contained are redeemable at any time before the 1st day of April, 1834. Given under my hand, at the auditor's office of Virginia, this 15th day of May, 1832.

JAMES E. HEATH, *Auditor of Public Accounts.*

51 *Bill of exceptions continued.*

"The defendants also offered in evidence the Auditor Bennett's two certificates relative to the two tracts of 100,000 and 53,000 acres, which certificates are in the words and figures following, to wit:"

Certificate of auditor.

"I, Jonathan M. Bennett, auditor of public accounts, hereby certify that it appears from the records of this office that Samuel Hollingsworth is charged on the land books of the commissioners of the revenue for the county of Kanawha in each of the years 1797–'98–'99, 1800, and 1801; that Jesse Waln, &c., are charged on said books of said commissioners in each of the years from 1803 to 1814, both inclusive, (except the year 1808,) in which last mentioned year there was no commissioners' books throughout the Commonwealth; that in the year 1815 the Bank of Delaware and John Hollingsworth and J. Shallcross are charged; and that in the year 1816, and all the subsequent years, up to 1831, inclusive, Matthias Bruen is charged on said commissioners' books with a tract of 100,000 acres of land, without discription as to location on said books, for each of the years in which it was so charged as aforesaid. Up to the year 1816, and in the year last mentioned, and in each of the years, up to 1831, inclusive, the said tract of land is described to lie "on waters Pocatalico and 18-mile creek," called "Jabel," and is assessed with $12 50 tax thereon for the year 1797; with $81 60 tax thereon for each of the years 1798, 1799, 1800, 1801, and 1802; with $81 60 tax thereon for each of the years 1803–'04–'05–'06–'07–'09–'10–'11 and '12; with $108 80 tax thereon for the year 1813, and with $144 50 tax thereon for the year 1814; in the year 1815 with $144 50 tax thereon; with $127 50 tax thereon for each of the years 1816, 1817–'18, and '19; with $12 50 tax thereon for the year 1820; with $9 00 tax thereon for each of the years 1821 and 1822, and with $8 00 tax thereon for each of the years, from 1823 to 1831, both inclusive. That the tract of 100,000 acres of land charged as aforesaid was not returned to this office as delinquent for the non-payment of the taxes assessed thereon for either of the years 1797, 1799, 1800 and 1801, and was returned to this office as delinquent for the non-payment of the taxes assessed thereon for each of the years 1802 to 1807, both inclusive, and for each of the years from 1809 to 1831, both inclusive.

"I further certify that the taxes for the years 1798, 1802–'03–'04 '05–'06–'07–'09–'10–'11–'12–'13–'14–'15–'16–'17–'18–'19–'20–'21 '22–'23–'24–'25–'26–'27–'28–'29–'30 and '31, assessed on the tract of 100,000 acres of land charged as aforesaid, and for the non-payment of which the said tract of land was returned to this office as delinquent, have never been paid, so far as the records of this office disclose.

"I further certify that I have caused the land books of the commissioners of the revenue for the counties of Mason and Jackson, from their respective formations, to be carefully examined, and that up to the present time no tract of 100,000 acres of land was ever

Names of owners of land.	No. of acres.	Rate per acre.	Total value.	Amount of tax at ½ per cent.	Total tax.	What year.
Samuel Hollingsworth	100,000	1s.	£5,000	£12 10 0	£25 0 0	1797.
Do	200,000	*Cents.* 17	$34,000 00	$129 20	$129 20	1798.
Do	200,000	17	34,000 00	163 20	163 20	1799.
Jesse Waln and others	100,000	17	17,000 00	81 60	81 60	1799.
Samuel Hollingsworth	200,000	17	34,000 00	163 20	163 20	1800.
Jesse Waln and others	100,000	17	17,000 00	81 60	81 60	1800.
Samuel Hollingsworth	200,000	17	34,000 00	163 20	163 20	1801. The letter W for this year lost.
Do	153,000	17	26,000 00	124 80	124 80	1802.
Jesse Waln	100,000	17	17,000 00	81 60	81 60	1802.
Jesse Waler & Co	100,000	17	17,000 00	81 60	81 60	1803.
Jesse Waller & Co	100,000	17	17,000 00	81 60	81 60	1804.
Do	100,000	17	17,000 00	81 60	81 60	1805.
Do	100,000	17	17,000 00	81 60	81 60	1806.
Do	100,000	17	17,000 00	81 60	81 60	1807.
Do	100,000	17	17,000 00	81 60	81 60	1809.
Do	100,000	17	17,000 00	81 60	81 60	1810.
Do	100,000	17	17,000 00	81 60	81 60	1811.
Do	100,000	17	17,000 00	81 60	81 60	1812.
Do	100,000	17	17,000 00	.....	108 80	1813.
Do	100,000	17	17,000 00	144 50	144 50	1814.
Bank of Delaware, and J. Hollingsworth, and John Shalicross.	100,000	17	17,000 00	144 50	144 50	1815. Described "waters of Pocatalico and Kanawha, called Jabel tract."
Matthias Bruen	100,000	17	17,000 00	.....	127 50	1816. Described, "on waters of Pocatalico, on 18-mile creek, transferred from J. Willard."
Do	100,000	17	17,000 00	.....	127 50	1817. "In Kanawha county, called Jabel tract."
Do	100,000	17	17,000 00	.....	127 50	1818. Do. do. do.
Do	100,000	17	17,000 00	.....	127 50	1819. Do. do. do.
Do	100,000	10	10,000 00	.....	12 50	1820. Do. do. do.
Do	100,000	10	10,000 00	.....	9 00	1821. Do. do. do.
Do	100,000	10	10,000 00	.....	9 00	1822. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1823. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1824. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1825. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1826. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1827. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1828. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1829. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1830. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1831. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1832. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1833. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1834. Do. do. do.
Do	100,000	10	10,000 00	.....	8 00	1835. Do. do. do.

Do	100,000	10	10,000 00		8 00	1836.	Do.	do.	do.
Do	100,000	10	10,000 00		8 00	1837.	Do.	do.	do.
Do	100,000	10	10,000 00		10 00	1838.	Do.	do.	do.
Do	100,000	10	10,000 00		10 00	1839.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1840.	Do.	do.	do.
Do	100,000	5	5,000 00		6 25	1841.	Do.	do.	do.
Do	100,000	5	5,000 00		6 25	1842.	Do.	do.	do.
Do	100,000	5	5,000 00		7 50	1843.	Do.	do.	do.
Do	100,000	5	5,000 00		6 25	1844.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1845.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1846.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1847.	Do.	do.	do.
Matthias Bruen's heirs	100,000	5	5,000 00		5 00	1848.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1849.	Do.	do.	do.
Do	100,000	5	5,000 00		5 00	1850.	Do.	do.	do.
Do	100,000	20	20,000 00		24 00	1851.	Do.	do.	do.

Teste:

A. W. QUARRIER, *Clerk Kanawha County Court.*

Bill of exceptions continued.

"And after the aforesaid evidence was given in by the plaintiffs and defendants, and heard by the jury, and before the jury retired to consider of their verdict, the defendants, by their counsel, asked the court to give to the jury the following instructions: First series of instructions, numbered from one to twenty-four, inclusive; also the second series of instructions, numbered from one to twelve, inclusive; and also the third series of instructions, numbered from one to ten, inclusive. Which instructions are in the words and figures following, to wit:"

57 *First series of instructions, from one to twenty-four.*

"*First.* That if the 100,000-acre tract of land called 'Jabel' had, on or before the 1st day of April, 1831, been returned delinquent for the non-payment of taxes properly charged thereon for the year 1820, or for any year or years previous thereto, and had not before that time been redeemed or otherwise exonerated from the arrears of taxes thereon, then, unless said tract of land has been subsequently redeemed by the payment of such arrears of taxes, or unless the same has been legally exonerated from such taxes under the provisions of the 21st and 22d sections of an 'act concerning lands returned delinquent, &c.,' passed the 1st day of April, 1831, by the second section of that act and subsequent acts on the subject, the said land became forfeited and vested in the president and directors of the literary fund on the first day of October, 1834, or at all events on the first day of July, 1838." ("Given.")

"*Second.* If the said tract of land had, on the 1st day of April, 1831, been returned delinquent for the non-payment of taxes properly charged thereon for any year or years subsequent to the year 1820, and previous to the 1st day of April, 1831, and had not before that time been redeemed or otherwise exonerated from such arrears of taxes due thereon, then, unless the said tract of land has been subsequently redeemed by the payment of the arrears of taxes due thereon for the last-mentioned years, or unless said tract has been legally exonerated from said last-mentioned taxes under and by virtue of the 21st and 22d sections of the said act passed the 1st day of April, 1831, by virtue of the third section of said act and the subsequent acts on the subject, the said land became forfeited and vested in the president and directors of the literary fund or the Commonwealth on the first day of October, 1834, or at all events on the 1st day of July, 1838.

"For acts extending the time of redemption to 1st day of October, 1834, see 1st, 2d, and 3d sections of the act passed the 16th day of December, 1831, and the act passed the 11th day of March, 1834. The last-mentioned act, as well as the second section of the aforesaid act of the 16th of December, 1831, includes likewise the 20th section of the aforesaid act of the 1st of April, 1831. The time of redemption of the said land, mentioned in the two preceding instructions, is further extended by the act passed February 27, 1835, also by the act of March 30, 1837, also for the last time by the act of March 15, 1838.'" ("This instruction is given.")

"*Third.* That if the said land, after the 1st day of April, 1831, was returned delinquent for the non-payment of the taxes properly charged, which became due thereon for the year 1831, then, unless the said land has been redeemed by the *payment* of such taxes, the same became forfeited and vested in the president and directors of the literary fund or the Commonwealth by the provisions of the 4th section of the said act of 1831, on the last day of December, 1834, or at all events on the 1st of July, 1838. There is no act extending the time for the redemption of this year until the act of the 30th of March, 1837, which applies to all lands theretofore forfeited either for the non-payment of taxes or non-entry on the commissioners' books. Also the act of
58 March 15, 1838, not competent to release the taxes of this year under the 21st and 22d sections of the act of 1831.—(See 41st section of the act passed 9th February, 1814, 2d R. Code, page 552; also 1st section of the act passed March 6, 1827, supplement to the Revised Code, page 341, section 1st, and 1st, 2d, and 3d sections of the act 1st of April, 1831; also 8th section of the act of the 10th March, 1832, supplement to Revised Code, page 359.")

"*Fourth.* That if said tract of land has became forfeited and vested in the president and directors of the literary fund, as stated in any or all the three preceding instructions, then, as to so much of said land as may not have been redeemed by the former owners, or sold by the Commonwealth as forfeited lands, or vested in some *bona fide* claimant, under a junior grant, are liable to entry, survey, and grant in the same manner as waste and unappropriated land, under and by virtue of the 1st, 2d, and 3d sections of the Virginia code, chapter 114, page 495."

"*Fifth.* That both the judgments of exonereter of the county court of Kanawha county, releasing the aforesaid 100,000-acre tract of land, rendered on the 14th day of November, 1831, are void."

"*Sixth.* That the proceedings of said court of the 2d day of December, 1831, in relation to said tract of land is null and void.—(See 3d Grattan, page 82, and 5th Grattan, 230; 6th Wheaton, 119; 9th Wheaton, 541; 8 Cranch, page 9; 7th Hill, page 13; 9th Cowan, page 227; 11th Wendall, 647; 5th Pickering, 24; 11th Massachusetts, 513; Bouvier's Law Dictionary, page 683.) All the above authorities are cited to show that a court, when exercising a special statutory jurisdiction, must show that the statute has been strictly preserved."

"*Seventh.* That the judgment of the county court of Kanawha county, rendered the 12th day of November, 1832, exonerating said tract of land from the arrears of taxes charged or chargeable thereon for the years 1821, '22, '23, '24, '25, '26, '27, '28, '29, '30, and '31 is *coram non judice* and void."

"*Eighth.* That the county court of Kanawha county, on the 12th day of November, 1832, had no power or authority of law to release the taxes on the said tract of land for the year 1831; and that its judgment of exonereter for that year is *coram non judice* and void; and that unless the taxes have been paid for that year the said land for the delinquency of said year has become forfeited and vested in the president and directors of the literary fund, or the Commonwealth, and

that the defendants may set up the Commonwealth's title so acquired to defeat the plaintiff's action in this case.—(See Elliott *vs.* Pier., vol. 1st Peters, pages 339 and 340; 8th Howard, Williamson *et al. vs.* Berry, page 531; 11th Massachusetts, 513; 8th East, page 395; 6th Durmford and East, page 583.")

"*Ninth.* That the county court of Kanawha had no authority or jurisdiction to exonerate any land out of and beyond the boundaries of the county of Kanawha; and as the aforesaid releases, dated the 14th of November, 1831, purport to exonerate lands beyond the boundaries of Kanawha county, they are void on that account, the releases showing that the lands, when the same were obtained
59 from the county court of Kanawha county, were situated in different counties, but leaving it wholly uncertain what proportion was in either county.—(See 21st and 22d sections of the act of 1st April, 1831, also the 11th section of same act; see the 3d and 4th sections of the act of March the 30th, 1837; also 8th section of the act of March 15th, 1838; also Smith *vs.* Chapman, 10th Grattan, pages 471, 472; Bouvier's Law Dictionary, page 682, and authorities there cited.")

"*Tenth.* That if the aforesaid judgments of exonereter, or any or either of them, are void, no certificate of the auditor can make the same good, the auditor having no legal authority to release said land himself, and having no jurisdiction or authority to decide upon their validity, nor can any action of the auditor prevent the operation of the law in working a forfeiture for the non-payment of taxes properly charged, or release such forfeiture after it has taken place by operation of law.—(See Savasser *vs.* Washburn, 11th Grattan, p. 576; The People *vs.* The Phenix Bank, 24th volume of Wendall's Reports, p. 430; The State of Illinois *vs.* Delifield, 26th Wendall, p. 191.)

"That if the jury are satisfied from the evidence that the taxes on the 100,000 acre tract of land for 1831, and for any year or years prior thereto, added together, exceeded the sum of ten dollars on the 10th day of March, 1832."

"*Eleventh.* That said tract of land was not released under and by virtue of the *the* 2d section of the act passed the .0th day of March, 1832; and even if the release of the 12th day of November, 1832, released all the tax on said land except the year 1831, that the tax for that year would not be released under the 2d section of the act of the 10th day of March, 1832."

"*Twelfth* That after lands have been forfeited and vested in the Commonwealth, that no lapse of time or acquiescence of public officers unauthorized by law can relieve the forfeiture, or divest the Commonwealth's right to the land so acquired, but they remain in the Commonwealth until regranted by virtue of positive law.—(See the three last decisions referred to.")

"*Thirteenth.* That if the said tract of 100,000 acres of land become forfeited and vested in the Commonwealth under any of the sections of the said act of the 1st of April, 1831, and were not redeemed or legally exonerated before the 1st day of July, 1838, after that time there was no further right of redemption; and from that time the

land would remain vested in the Commonwealth and the property of the State until regranted according to law."

"*Fourteenth.* That if the said 100,000-acre tract of land became forfeited and vested in the Commonwealth, from the time that the same became so vested no possession of the plaintiffs or any or either of them could be adversary to the Commonwealth; and the statute of limitations would not afterwards begin to run in their favor against any persons claiming any portion of said land under title from the Commonwealth until said title accrued.

"A limited jurisdiction conferred on any court by statute is a jurisdiction limited as to the time of its duration, for the benefit of a particular individual or class of individuals, or limited to a particular object, and to be exercised in a special and prescribed mode set out in the statute; and the mere fact that the jurisdiction of a court is added to don't make it special if the added jurisdiction is general in its character.—(See cases cited under 6th instruction, and especially 8th Howard, page 531, (521."

"*Fifteenth.* That Matthias Bruen, under the 21st section of the act passed the 1st of April, 1831, had no right to get the 100,000 acre tract of land released from the taxes of any person or persons, except those from and through whom he derived title, as shown by the record of releases put in evidence by the plaintiffs, and that the judgment of the county court, so far as it purports to release the land from the taxes charged to all other persons, and for all other taxes charged or chargeable thereon, is *coram non judice* and void."

"*Sixteenth.* That the return of land in controversy as delinquent being necessary to give the county court jurisdiction over the subject, and none of the records of releases offered in evidence by the plaintiffs showing said 100,000-acre tract of land to have been returned delinquent prior to 1815, the court had no jurisdiction to release the taxes on said land as delinquent in any name or names prior to that period."

"*Seventeenth.* That if the jury are satisfied from the evidence that the 100,000 acres of land in controversy was duly charged on the books of the commissioner of the revenue of Kanawha county, and returned delinquent in the names of Jesse Waln and als. or in Jesse Waller and als. from 1802 to 1814, inclusive, or for any of those years, and in no other names, and that the taxes for such years have not been paid, that said land, under the second section of the act passed April 1, 1831, became forfeited and vested in the president and directors of the literary fund or the Commonwealth on the 1st day of October, 1834, or at all events on the 1st day of July, 1838."

"*Eighteenth.* That the record of the county court of the 14th of November, 1831, offered in evidence by the plaintiffs, purporting to release three tracts or parcels of land, to wit, a 53,000-acre tract of land described as lying on the waters of Pocatalico, called "Grange;" also a 47,000-acre tract of land described as lying on the waters of Elk, called Sheba; and also a 100,000-acre tract of land, called Jabel; and said release averring that the 53,000-acre tract of land is the same charged in the delinquent lists to the directors of the Bank of Delaware, &c., as a tract of 50,000 acres; and that the 47,000-acre tract of land is the same charged in the delinquent lists to Samuel Hollings-

worth, &c., as a tract of 50,000; and that the 100,000-acre tract of land called Jabel is a distinct tract of land from the two 50,000-acre tracts charged in the delinquent lists as aforesaid. It is not competent for the plaintiffs to contradict those facts thus set out in the release which they have offered in evidence as proof of the exoneration of said three tracts of land from the taxes charged thereon, &c.; but if they can and do contradict them, there is no jurisdiction shown in the county court over the 53,000-acre tract of land or the 47,000-acre tract; and their said judgment exonerating the three tracts of
61 land aforesaid being joint and entire, is *coram non judice* and void."

"*Nineteenth.* That if the jury shall believe, from the evidence, that the paper of the 14th of November, 1831, purporting to be a record of the county court of Kanawha, and which embraces, among other things, the pretended release of the 100,000-acre tract of land called 'Jabel,' was not signed by the first magistrate then sitting in commission before the adjournment of said court, but was signed by a junior magistrate in commission then sitting, that said paper, for want of due authentication, cannot be considered as the record of said court, and is of no validity whatever.—(1st Revised Code, page 251, section 19; Purtle's Digest, A. K. Marshall, page 606; Smith's Leading Cases, page 701, 703, and 704.")

"*Twentieth.* That the effect of the judgment of release of the county court of the 14th November, 1831, made under the 21st section of the act of 1831, is only operative to release the 100,000-acre tract of land for the year 1815, and for no delinquency prior to that period, supposing said release to be valid."

"*Twenty-first.* That if the jury are satisfied, from the evidence, that the 100,000-acre tract of land in controversy was returned delinquent for the non-payment of the taxes thereon, in the name of Jesse Waln and als., or Jesse Waller and als., for the years 1802 to 1814 inclusive, or for any of those years; and further satisfied that the lists of the auditor, of lands released and exonerated, offered in evidence by the plaintiffs themselves, show that said land was exonerated for the years 1815 to 1831 inclusive, but for no year or years prior to 1815; and further satisfied that the auditor's lists of forfeited lands returned to the county of Kanawha in 1838, offered in evidence by the plaintiffs, reports the said 100,000 as forfeited; that the same is conclusive evidence against the plaintiffs of the forfeiture of said land for said taxes prior to 1815, and that the same is vested in the president and directors of the literary fund, unless the plaintiffs shall have satisfied the jury that the taxes have been paid for those years.—(See the 7th section of the act passed the 15th of March, 1838.")

"*Twenty-second.* That the record of the release of the county court of the 100,000-acre tract of land for the taxes due thereon, dated November the 14th, 1831, under the 22d section of the act of 1831, for the years 1815, '16, '17, '18, '19, and '20, not averring that there was sufficient property on the premises, whereon the collector might have made distress for said taxes, that it was competent for the defendant to prove that there was not sufficient property on the premises in any or all of those years; and if the jury are satisfied from the evidence

that there was not sufficient property on the said premises whereon the collector might have made distress for said taxes for any or all of such years, that for such years the said release does not exonerate said lands; and that, unless the jury are further satisfied that the taxes for such years have been paid, that for the delinquency of such years the said land became forfeited and vested in the president and directors of the literary fund, or the Commonwealth, by the 2d section of the act of the 1st of April, 1831, on the 1st of October, 1834."

62 "*Twenty-third.* That the plaintiffs in this action cannot recover against any of the defendants, who at the time of the suit were not in possession of or exercising acts of ownership over some part of the land in controversy, and having no claim to any part thereof, except entries and surveys."

"*Twenty-fourth.* That the right of delinquents to get their land released without paying their taxes, under the 21st and 22d sections of the act of the 1st of April, 1831, was an act of grace and bounty extended to such delinquents on the part of the State upon the terms and provisions set out in said sections; and if they chose to avail themselves of the bounty, instead of paying up their taxes, they took the bounty upon their own responsibility; and if they failed to get their lands legally exonerated, the consequences must rest upon their own heads, though they may have taken such illegal releases to the auditor, and induced him to treat them as valid."

All of the aforesaid instructions, numbered from 3 to 24 inclusive, refused.

Second series of instructions, from 1 *to* 12 *inclusive, offered by Judge Fry.*

"*Instruction first.* That if from the evidence the jury shall believe that the defendants, Caleb King, Charles Clendenin, John J. Brown, D. F. Milam, James Goff, and others, were in possession, for the space of more than eighteen years before the bringing of this suit, of separate or several parcels of the lands sued for by the plaintiffs; that such possession has been continued and uninterrupted for the space aforesaid; and that said persons held, occupied, and enjoyed the same for their own use and benefit, and as apparent owners, and did not enter into the same originally in privity with the plaintiff, or those under whom the said plaintiffs' claim, and never had any contract, engagement, or understanding of any kind or nature whatever with the said plaintiffs or those under whom the said plaintiffs claim, either at the time of so entering into possession or at any time since, but have at all times held, used, and occupied the same in the accustomed mode of one using and occupying land as for himself, that then said possession should be taken to be *prima facie* adverse."

"*Second.* That, under circumstances as stated in the first instruction, actual occupation, continued as aforesaid for the time aforesaid, unbroken in the manner aforesaid, should be taken to be adverse to the extent of his enclosure, notwithstanding the said entry and possession may have been *tortious* or destitute of color of title."

"*Third.* That, under the circumstances in the two foregoing instructions mentioned, actual occupation for the time aforesaid in the manner aforesaid continued unbroken, and in all respects as above
63 supposed, should be taken to be adverse, notwithstanding the said defendants entered originally as trespassers, without declaration, in words or writing, as to how or what title or claim of title under which they entered, but without any privity, contract, agreement, or understanding of any kind whatsoever with the said plaintiffs, or those under whom the said plaintiffs claim, either at the time of such entry or at any time since, the same should be held *prima facie* adverse."

"*Fourth.* That if said persons mentioned in the first instruction of this second series entered upon the land in the plaintiffs' declaration mentioned without privity with the said plaintiffs, or those under whom the said plaintiffs claim, and without any contract, agreement, or understanding of any kind whatever with them, or any of them, cleared, improved, and built cabins on said lands, and lived on the place occupied by them, that they thereby acquired something which they might transfer to others; that if they also, and those under whom they claim, entered immediately into possession of the same by virtue of said transfer, that the said transfer was not necessary to be evidenced by writing; and that if the possession of the defendants, and those under whom they claim, added together, unbroken and continued, amounts to the period prescribed by the statute of limitations, and was, both at the entries aforesaid and at all times afterward, held, used, and occupied the same for their own use and benefit, and without any privity, contract, agreement, or understanding whatever with the said plaintiffs, or those under whom the said plaintiffs claim, at any time whatever during the possession of the parties, or either of them, that then the same should be taken and held to be *prima facie* adverse, as to said improvement or possession, to the extent of the actual enclosure, for the period prescribed by the statute of limitations."

"*Fifth.* That the plaintiffs, Tyler, or Whitehouse, under the deeds made to them respectively by Samuel A. Miller to said Whitehouse, and by said Whitehouse to said Tyler, should not recover of any of the defendants without showing that they, the said defendants, held or claim lands lying without the specific reservations in their said respective deeds mentioned."

"*Sixth.* That by the decrees of partition and the deeds made under them by Samuel A. Miller, commissioner, the joint title and right of entry of the grantees therein to the 100,000-acre tract called 'Jabel' was severed, and that it is not competent for the said Whitehouse and the said Alex. McW. Bruen, and the said Perkins and wife, to join in this action to recover the said distinct and separate parcels of land conveyed to them by their said deeds respectively."

"*Seventh.* That by the decrees of partition and the deeds made thereunder the title and right of entry and possession to the said 100,000-acre tract, called 'Jabel,' was severed, and that it is not competent for said parties to join in this action, and to recover separately the said separate and distinct parcels of land so separately conveyed to them; and that, moreover, neither the said Alex. McW. Bruen, and

said Tyler claiming under him, can recover of any of the de-
64 fendants as to the said 2,500 acres conveyed to the said Alex. McW. Bruen, without showing that such defendants, at the time this suit was brought, were in possession of said 2,500 acres, or some part thereof, or had some claim thereto, or to some part thereof at that time; and that as to the said 85,000 acres conveyed to the said Whitehouse and wife, and by them to said Tyler, and by him reconveyed to said Whitehouse, he should not recover of any of the defendants whom he has not shown to be within the bounds of said 85,000 acres, as distinguished from said 2,500 acres assigned to said Alex. McW. Bruen, and the 2,500 conveyed to Frances D. and Mary Lundy Bruen, and also as distinguished from the reservations made in said deeds, respectively, so that it should appear that such defendants were on the land of the said Whitehouse, (or Tyler, his assignee,) outside of the said two parcels of 2,500 acres each, and outside of the specific reservations made in the said deeds, respectively."

"*Eighth.* That as to the reservations made in the patent to Samuel Hollingsworth, the same being specially named and described, and not being general, the plaintiffs ought not to recover of any of the defendants whom they have not shown to be on their lands or claiming title thereto, outside of the said specific reservations; and that it is not incumbent on the defendants, if the plaintiffs do not show this, to locate and fix these reservations themselves, and to show that they are on said reservations, but that the burden of showing or proving this is on the said plaintiffs."

"*Tenth.* That under the count in the name of Charles C. Perkins and Frances D. Perkins his wife, there can be no recovery, nor under the counts in which they are joined with others, should there be any recovery in their names, as the plaintiffs have offered no evidence touching any marriage between the said Charles C. Perkins and any devisee mentioned in the will of Matthias Bruen, read in evidence by the plaintiffs."

"*Eleventh.* That as to the defendants who are not shown to have been in possession of some parts or parcels of the land claimed by the plaintiffs in their declaration at the time the suit was brought, the jury ought to find for them."

"*Twelfth.* And that as to such defendants, not shown to be in possession at the bringing of this suit, but who are shown to have made entries on the books of the surveyor of Kanawha, Jackson, and Putnam counties, for several parts or parcels of the land claimed by the plaintiffs, doing or making no other acts of ownership or claim than the making said entries on the books of said surveyors, respectively, that such entries do not establish such claim of title under the fifth section, page 558 of the present Code of Virginia, as to justify their
65 being sued in this action. And that as to those defendants who have done nothing more than make such entries as aforesaid, and the same was afterwards surveyed by the surveyors, respectively, according to the laws in that behalf, before the institution of this suit, but not carried into grant, that the same principle applies to them as to those who have merely made entries."

Third series of instructions, numbered from 1 *to* 10, *inclusive, offered by James H. Brown.*

"*Instruction first.* That if the jury believe, from the evidence, that the 100,000-acre tract of land, called 'Jabel,' in controversy, is the same tract of 100,000 acres charged on the land books of Kanawha county, and assessed with taxes thereon from 1797 to 1858, inclusive, as stated in the official certificate of Jonathan M. Bennett, auditor of public accounts of Virginia, and filed in this cause, and that it, the said tract of 100,000 acres, has been regularly returned delinquent for the non-payment of the taxes and damages charged thereon for the years 1803 to 1831, inclusive, as stated in said certificate, and that the said taxes and damages have so remained due, and unpaid, and delinquent, that then the said tract of land became forfeited to the Commonwealth, and vested in the president and directors of the literary fund, on the 1st day of October, 1834, or at farthest on the 1st day of July, 1838, unless exonerated or redeemed according to law from said delinquency, for each and every year the same was so delinquent; and that if the taxes and damages thereon delinquent, for any one or more of the said years, has not been legally discharged by any of the said pretended releases of the county court, naming the specific years released, that then the forfeiture aforesaid, and vesting thereof aforesaid in the said president and directors of the literary fund, is as absolute and perfect as if for all of the said years; and being so forfeited and vested, can only be divested by force, and in pursuance of positive law providing for such divesting thereof."

"*Second.* That if the jury believe, from the evidence, that the pretended record of the county court of Kanawha, dated 14th November, 1831, was not signed by the first magistrate in commission then sitting, at or before the adjournment of said court, but that the same was signed by a junior magistrate in commission, then sitting; and if they further believe that said junior magistrate, so sitting and signing the said minutes or proceedings, was at the time the acting agent of the said Matthias Bruen in the management of the said lands therein attempted to be exonerated from arrears of taxes charged thereon, that then the said pretended judgment is invalid, and of no force or effect."

"*Third.* That the survey and plat in the partition of the land in controversy among Bruen's heirs is not evidence of the boundary or creeks, or other localities, as against the defendants in this suit."

"*Fourth.* That the statement in the pretended release dated November 14th, 1831, in these words following, viz: 'And that he has paid all the purchase money therefor, having no portion thereof in his hands to satisfy the taxes and damages in arrear and unpaid at the date of his purchase, or any part thereof,' are not sufficient to raise a necessary presumption that all or any part of the said purchase money was paid before the said 1st day of April, 1831; and if the jury are satisfied, from the evidence, that the said purchase money, or any part thereof, was paid by said Matthias Bruen, after the 1st

day of April, 1831, with full knowledge of the taxes thereon charged and then remaining delinquent, that then the release is null and void."

"*Fifth.* If the jury, from the evidence, believe that William Hill entered on the land in controversy under contract of purchase of the land occupied by him, either mediately or immediately, from Matthias Bruen, under whom the plaintiffs claim, and that the said land held and occupied by said Hill, and those from whom he obtained the possession thereof, since 1817, that then, to enable the plaintiffs to recover in such case, the plaintiffs must show notice to quit, or demand and refusal of the possession, brought down to Hill six months before the institution of this suit."

"*Sixth.* Same as to Nathan Casto; same as to Robert T. Harvey, for the Poindexter place of 700 acres."

"*Seventh.* That if the jury believe, from the evidence, that the defendant, Hill, holds under the title bond from Matthias Bruen, under whom the plaintiffs claim the land now held by him in controversy, and that he, and those under whom he claims, have so held and claimed the said land under said title bond, dated in September, 1817, from the date of said bond to the present time, that the jury, after a lapse of 20 years from the date of said bond, may presume a deed from the said Bruen for the land so held and claimed."

"*Eighth.* Same as to Nathan Casto and Jonathan Pfost, who claim under the title bond from Matthias Bruen to Crooke."

"*Ninth.* That if the jury, from the evidence, believe that Matthias Bruen, at the time of his purchase of the 100,000-acre tract of land in controversy, knew that said land was properly charged with taxes and damages thereon for the years 1803 to 1814, inclusive, amounting, together, to the sum of $906 60, and that the said land was then, at the time of his purchase, returned delinquent for the non-
67 payment of said taxes; and also then knew that the Commonwealth of Virginia had a lien by law on said land for said taxes and damages so delinquent and unpaid; and also if the jury further believe that the said Matthias Bruen, with full knowledge of the premises, and with a view to secure himself against any loss on account of said tax lien and delinquent taxes and damages before he paid for said land, required and obtained from his vendor, Benjamin Willard, an ample covenant or covenants contained in the deed of said Willard to said Bruen, dated April 14th, 1815, to indemnify the said Matthias Bruen against the said taxes and damages and the Commonwealth's lien on the land therefor, and against all loss that might accrue to him, the said Bruen, by reason thereof; and if the jury further believe that the said Matthias Bruen, knowing the premises and being secured as aforesaid, voluntarily paid to the said Willard, or to any one else for him, all the purchase money of said lands, so as not to leave in his hands any part thereof to be applied to the payment of the taxes and damages aforesaid due and charged thereon, and delinquent as aforesaid, that then he, the said Matthias Bruen, was not a *bona fide* purchaser thereof, and not entitled to the benefit, nor in a condition to receive the bounty provided in the 21st section of the act of April 1st, 1831."

"*Tenth.* That unless the jury are satisfied, from the evidence before them, that the said Matthias Bruen had actually paid all the purchase money of the 100,000-acre tract of land in controversy before the 1st day of April, 1831, and that no part thereof was paid after the said 1st day of April, 1831, and before the 14th day of November, 1831, that then the said Matthias Bruen was not in a condition to take the benefit, or receive the bounty provided in the 21st section of the act of April 1st, 1831."

Bill of exceptions continued.

"All of which instructions the court refused to give, except the first and second in the first series, and the tenth in the second series.

"And the plaintiffs, by their counsel, also asked the court to give to the jury the three following instructions, numbered one, two, and three; which instructions are in the words and figures following, to wit:"

"*No. one.*—That the judgments rendered by the county court of Kanawha county, in the years 1831 and 1832, on the motion of Matthias Bruen, in relation to the exoneration of delinquent taxes on the land in controversy, as well as other lands, and put in evidence in this cause, did exonerate the taxes delinquent on the land in controversy for the year 1831, and all years prior thereto."

"*No. two.*—That if the jury believe, from the evidence in the cause, that the defendants, or any or either of them, had entries, or entries and surveys at the time of the institution of this suit, on separate
68 parcels of the land in controversy, and that such defendants, respectively, claimed title to or interest in said land in controversy, to the extent of their respective entries or their entries and surveys, and under the same, then it was competent for the plaintiffs to make such parties defendants in this cause, and recover against them, although the said defendants were not in occupation of their respective entries, or entries and surveys, at the time of the institution of this suit."

"*No. three.*—That if the jury believe, from the evidence, that the title of Bruen, and those claiming under him, was and is paramount title to the land in controversy, and that the defendants, or any or either of them, entered and took possession of the same, or any part thereof, without any title or claim, or color of title to any part thereof, then such entry and possession was not adverse to the title of Bruen or those claiming under him, but was subservient thereto."

Bill of exceptions concluded.

"All of which last three instructions the court gave.

"To all of which opinions and rulings of the court, refusing to give to the jury the aforesaid instructions asked by the defendants' counsel, as well as giving those asked by the plaintiffs' counsel, the defendants, by their counsel, except, and pray that these, their exceptions, may be signed, sealed, and saved to them; and it is done accordingly.

"JOHN W. BROCKENBROUGH. [L. S.]

"Which is signed, sealed, and reserved to them."

UNITED STATES OF AMERICA,
Western district of Virginia, ss:

I, Joseph W. Caldwell, clerk of the district court of the United States for the western district of Virginia, holden at Charleston, do certify that the foregoing is a true transcript of the record and proceedings in an action of ejectment lately depending in said court, wherein Henry J. Whitehouse and others are plaintiffs, and Robert T. Harvey and others are defendants, with all things concerning the same.

In testimony whereof I have hereunto set my hand and the seal of the said court, at Charleston, this eleventh day of March, in
[L. S.] the year one thousand eight hundred and sixty-one, and in the 85th year of the independence of the said United States.

Teste: JOS. W. CALDWELL,
Clerk D. C. U. S., Western dist., Va.

Clerk's fee for record, $66 00.

To the honorable John W. Brockenbrough, judge of the district
69 *court of the United States for the western district of Virginia.*

Your petitioners, Robert T. Harvey, William A. McMullin, John P. Hale, Benjamin P. Byrum, Andrew Parks, James H. Brown, James W. Hoge, Ira I. McGinnis, James Hutchinson, John J. Brown, John Dryden, Martin Edward King, Roderick King, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, James T. Lett, Dudley S. Montague, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Leander P. Watkins, Arthur Waugh, Creed M. Boswell, John M. Fisher, Noah Dawson, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David T. Saunders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, John W. Dawson, Michael Derrick, William B. Sigman, Hiram Asbury, William A. Asbury, Silas Carney, James Casey, William Clendenen, Benjamin Coleman, James Craigo, Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higgenbotham, John Higgenbotham, Aaron Hill, William Hill, Mose Higgenbotham, William T. Higgenbotham, Francis Higgenbotham, Joseph Hutton, Noah H. Hoffman, Simeon Kelley, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Saunders, Jacob M. Sigman, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harmon Williams, John Russell, Silas Painter, J. M. Atkeson, Thomas Davis, A. A. Handley, John A. Harmon, Bushrod Harrison, George W. Hedrick, Richard Snell, Thomas H.

Harvey, Thomas A. Vicars, Jarrett Hill, John Henson, sr., Samuel P. Stover, Miriam G. Hoffman, S. R. Jennings, Ezekiel Jividen, Joel Jividen, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, William Fisher, Anthony Hall, Edmond Harmon, Henry Harmon, Chrisman Harrison, Perry Fisher, Jeremiah Harrison, George Higgenbotham, Thomas Jones, and Martin King, respectfully represent:

That they are aggrieved by a final judgment of the district court of the United States for the western district of Virginia, holden at Charleston, in the county of Kanawha, rendered on the — day of August, A. D. 1860, in an action of ejectment, wherein Edward Griswold Tyler, Henry J. Whitehouse, and Evelina H., his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, are plaintiffs, and your petitioners defendants. A transcript of the record of the judgment complained of is herewith presented, by which it will be perceived that the case is substantially as follows:

Samuel Hollingsworth, on the 3d day of March, A. D. 1796, obtained a patent from the Commonwealth of Virginia for one hundred thousand acres of land, lying and being, at the time of the emanation of the grant, in the county of Kanawha, called "Jabel tract;" that said tract of land was afterwards, to wit, on the 12th day of January, A. D. 1798, conveyed by the patentee to Jesse Waln and others.

70 By a series of mesne conveyances the title to said tract of land passed to Joseph Willard, who, on the 14th day of April, A. D. 1815, conveyed said tract of land to Matthias Bruen, and from said Matthias Bruen and his heirs the title to said tract of land passed to the plaintiffs in the suit in which the aforesaid judgment was rendered.

The claim of title from the patentee to the plaintiffs aforesaid is regular, and vested them with the legal title to the land, unless said tract of land became forfeited and vested in the Commonwealth of Virginia for the delinquency and non-payment of the taxes thereon, as hereinafter described.

That the said Samuel Hollingsworth, about the time that he obtained the patent for the one hundred thousand acre tract of land aforesaid, also obtained from the Commonwealth of Virginia two other patents for lands lying in the county of Kanawha, one for fifty-three thousand acres, called "Grange," and the other for forty-seven thousand acres of land, called "Sheba," which last-mentioned two tracts of lands, by regular series of conveyances from the patentee, passed to the plaintiffs in the aforesaid suit, the plaintiffs not being tenants in common, but owning separate and distinct parcels of each of the three aforesaid tracts of land.

That each of the aforesaid tracts of land was regularly entered upon the commissioners' books of the county of Kanawha, and charged with taxes in the name of the aforesaid patentee, and continued so entered and charged, in the names of the various successive owners thereof, up to the time of the institution of the present suit aforesaid.

That all of the aforesaid tracts of land were delinquent for the non-payment of the taxes charged thereon, and so regularly returned for

each of the years from 1803 to 1831, inclusive, none of which taxes were ever actually paid by any of the owners of the said tracts of land.—(See certificates of Auditor Bennett, pages 51 and 52 of Record.) That at a county court held for the county of Kanawha, on the 14th day of November, 1831, the aforesaid Matthias Bruen obtained a pretended judgment from said court, exonerating the three several tracts of land from the taxes due and charged thereon for all the years from 1803 to 1820, inclusive, except the one hundred thousand acre tract called "Jabel," which was not released for the years prior to 1815.—(See page 41 of said Record.)

And that the auditor, in 1838, among the lands returned by him as forfeited and vested in the Commonwealth, returned the one hundred thousand acres of land as so forfeited and vested in the name of Jesse Waln and others, for the years 1803 to 1814, inclusive.—(See Record, pages 40 and 49.)

That on the 13th day of December, 1831, the said Matthias Bruen obtained from the county court of Kanawha an order amending the aforesaid judgment of exonereter.—(See page 43 of said Record.)

That at a county court held for Kanawha county, on the 12th day of November, 1832, the aforesaid Matthias Bruen obtained a pretended judgment from said court, exonerating the said three several tracts from all the taxes due and charged thereon for each of the years 1821 to 1831, inclusive.—(See page 43 of said Record.)

That said one hundred thousand acre tract of land, being entirely unoccupied by the plaintiffs in the aforesaid suit and those under whom they claim, and in a wilderness state, many of the petitioners
71 entered upon and took possession of separate and distinct parcels thereof, and cleared, enclosed, cultivated, held, and enjoyed such parcels, and claimed and used the same as their own property, for different periods, ranging from fourteen to twenty years, before the bringing of the suit aforesaid. And that others of the defendants had made entries, and others entries and surveys upon separate and distinct portions of said land, but had never entered on or exercised any acts of ownership over the lands so entered and surveyed, and had no other claim to the same save said entries and surveys.

Your petitioners assign the following errors in said judgment, to wit: The one hundred thousand acre tract of land, being delinquent for the non-payment of the taxes thereon from the year 1803 to 1831, inclusive, (see auditor's certificate in Record, page 51,) by the 2d, 3d, and 4th sections of the act of the legislature of Virginia, passed April 1, 1831, became forfeited and vested in the president and directors of the literary fund, unless the same was legally exonerated from said taxes by the county court of Kanawha county, under the 21st and 22d sections of said act. [The jurisdiction conferred upon the county court by said act is emphatically what the courts term a special limited statutory jurisdiction. The jurisdiction is limited as to duration of time, as to the class of persons for whose benefit it is intended, as to the subject matter, and as to the mode of its exercise. In such cases, unless the record shows that the statute conferring the jurisdiction has been strictly preserved and fully complied with, the judgment of the court will be treated as a nullity by any court where it is brought

before the court in a collateral way, and advantage is sought to be taken of it.]—(See Grattan's Reports, 3 vol., page 82; 5th volume of Grattan, page 230; 6th volume of Wheaton's Reports, page 119; 9th Wheaton, 541; 8th Cranch, page 9; 7th Hill's Reports, page 13; 9th Cowan's Reports, page 227; 11th Wendell, page 647; 5th Pickering, page 24; 11th Massachusetts Reports, page 513; Williamson and others *vs.* Berry, 8th Howard's Reports, page 531.)

It will not do for the plaintiffs to complain of the federal courts considering the validity of the judgments of the county court of Kanawha, exonerating the land from the taxes, for the plaintiffs bring these judgments before the court themselves in support of their title, and the court is necessarily compelled to pass upon their validity.

Two of these judgments of exonereter were rendered by the county court of Kanawha, on the 13th day of November, 1831. *The first* of the releases of that date, we maintain, is void, for the following reasons:

First. It does not aver or show that the land was not, prior to the 1st day of April, 1831, vested in the president and directors of the literary fund.

Second. It does not aver or show that Matthias Bruen derived title to the land from any of the persons in whose names the land is shown by the release to have been returned delinquent; nor does it aver or show that Bruen claims said land either mediately or immediately by grant from the Commonwealth.

Third. It does not aver or show that Bruen had legal possession of said land.

Fourth. The release does not aver or show that said land had been returned delinquent in the names of Jesse Waln and others, or any other person or persons, from 1805 to 1814, inclusive. There-
72 fore the court had no jurisdiction to release the land for those years, and for the delinquency of those years the land became forfeited and vested in the Commonwealth.

The second release is void for the following reasons:

First. It does not aver or show that said land was not, prior to the 1st of April, 1831, vested in the president and directors of the literary fund; nor does it show any of the prerequisites necessary to give the court jurisdiction, unless it can be aided by the recital in first release, which cannot be done.

Second. The release does not aver or show that, during the years 1815, 1816, 1817, 1818, 1819, and 1820, there was property on said land, out of which the sheriff or collector might have made distress for the tax, or that the taxes for which said land was returned delinquent were not in arrear and due, or that they had been paid; and yet these were the only grounds upon which the release was authorized under the second section of the act aforesaid.

Third. It was error to exonerate the land from all the taxes and, damages charged or chargeable thereon, whether charged in the name of Matthias Bruen or any other person or persons whatsoever; this was unauthorized by law, and in derogation of the provisions in favor of *bona fide* occupants in the same act.

Fourth. Both the aforesaid releases aver that the said tract of land,

at the time of the releases, lay partly in Mason and partly in Kanawha, without showing what parts or proportions lay in the respective counties, and yet the act only authorized the county court of Kanawha to release so much of said land as was situate in Kanawha county. Releasing the whole land, therefore, in both counties was contrary to law, and makes the entire judgment void.

The third order of the county court, made the 2d day of December, 1831, and which purports to be an amendment of the second release, reciting that the same was defective, is void, for the following reasons:

First. It was not competent for the court, at a subsequent term, to amend the judgment rendered at a previous term.

Second. It does not appear that the Commonwealth's attorney was present to defend the application.

Third. When the three preceding releases were made, it appears from the record of the court, together with the evidence in the cause, that the records were not signed by the oldest magistrate in commission then sitting, as required by law, but by a junior magistrate then sitting, and consequently the proceedings of the court are not so authenticated as to constitute valid records. One act upon the subject will be found in the first volume of the revised code of 1819, page 251, section 19. The record of the 13th day of November, 1831, was signed by Daniel Ruffner, when David Ruffner was the oldest justice sitting. The record of the 2d of December, 1831, was signed by Thomas Matthews, when Andrew Donnally was the oldest justice sitting.

The section referred to purports to be for the prevention of errors, and not only requires the proceedings of the court to be
73 signed, as required by the act, but declares that until so signed they shall be of no validity.

The third judgment of exonereter is dated on the 12th day of November, 1832, and is void for the following reasons:

First. It does not show that any part of said land was situate in the county of Kanawha.

Second. The release does not aver or show that Matthias Bruen had legal possession and title to said land prior to the 1st of April, 1831, nor does it state that he had legal possession at all.

Third. The release does not aver or show that there was any property on the land belonging to Matthias Bruen, or any person claiming under him, or upon which the sheriff or collector might have legally made distress.

Fourth. The release includes the taxes of 1831, which the court had no right to release; and the judgment for that reason being had in part, avoids the entire judgment; at all events it is void for that year.

The privilege of getting lands released without paying the taxes, being an act of grace on the part of the Commonwealth, a party availing himself of the bounty must bring himself strictly within the act, and the record must show that he has done so, to make the judgment of release valid.

The said land not having been legally exonerated, it became forfeited, under the act of the 1st of April, for all the taxes and damages

due thereon from 1803 to 1831, inclusive. This forfeiture became absolute, and the land vested in the Commonwealth on the 1st day of October, A. D. 1834. This forfeiture could only be released by positive law, and there has been no act of the legislature releasing the same. The right of redemption was extended by a succession of acts of the legislature up to the 1st of July, 1838, after which time the door of redemption was forever closed. Lapse of time can have no influence to release the forfeiture, for after the land once vested in the Commonwealth it would remain there forever unless released or regranted according to law. No laches is imputed to a Commonwealth, nor can lapse of time affect her rights. Nor can any unauthorized act of public officers compromise her interest.—(See Lavassor *vs.* Washburn, 11 Grattan's Reports, page 576; The State of Illinois *vs.* Delafield, 26 Wendell's Reports, page 191; The People *vs.* The Phœnix Bank, 24th volume of Wendell, page 430.)

These forfeited lands are made subject to entry by the Virginia code.—(See chapter 114, page 495, sections 1, 2, and 3.)

It is apparent that the county court of Kanawha had no jurisdiction to release this land from the taxes which fell due for the year 1831; there is no act of the legislature authorizing any such release. The act of the 1st of April, 1831, is the last act on the subject, and that only authorized the court to release the tax upon land which had been returned delinquent prior to the date of the act, and the land under the law would not be returned delinquent for that year until the fall of the year. The court, therefore, in releasing the taxes for the year 1831, acted wholly without authority of law, and its judgment was necessarily *coram non judice* and void.

Before entering upon this argument I refer to the second
74 volume of Revised Code, 1819, page 32, section 62, also page 547, section 22, to show that the land would not be returned delinquent until 1st of November, 1831.

The act of 1st of April, 1831, is a very elaborate act, containing a great many provisions, and was not only intended to forfeit lands delinquent for taxes which had accrued prior to the date of the act, but was also intended to establish a permanent system of forfeiture for future delinquencies. The act, of course, is speaking at the time of its date.

The first section has nothing to do with the question now under consideration. *The second section* provides for the forfeiture of all lands "returned" delinquent for the year 1820 or for any year or years previous thereto.

The third section for the forfeiture of all lands "returned" delinquent for any year or years subsequent to the year 1820 and previous to the passing of the act. *The fourth section* (which embraces the taxes of 1831) is in this language: In case any land shall hereafter be delinquent, &c., and the persons in whose names the same shall be so returned, or some other person for them, shall fail for three years, to be computed from the last day of December in the year when such taxes shall accrue, to pay the same, &c., from and after the said term of three years, the same shall become forfeited, &c.

It will be perceived in the second and third sections, which speak

of delinquencies accruing before the act, the past tense is used; but in the fourth section, which provides for the delinquencies which should accrue after the date of the act, the future tense is employed. Now, when we come to the 21st and 22d sections of the act, under which the court acted in granting the releases, we find that they both employ the past tense, in the language of the 2d and 3d sections already referred to, showing clearly, both from the fact of using the past tense and construing them in reference to the said 2d, 3d, and 4th sections, which are *in pari materia*, that the legislature only authorized those lands to be released which had been returned delinquent prior to the 1st day of April, 1831, the date of the act.

It is very apparent from the reading that all the provisions of the 21st section have reference to lands returned delinquent before the date of the act; and it is equally apparent, from the whole structure of the 22d section, that it has reference to the same character of delinquencies as the 21st section, and for the same periods.

A further evidence that the 21st and 22d sections were only intended to authorize the courts to release lands which had been returned delinquent prior to the passage of the act will be found in the fact that the fourth section of the act provided for a continual succession of forfeitures in the future, whereas the right to obtain releases was limited to the 1st day of January, 1833, which was only a reasonable time given in which to apply to get the lands released which had been returned delinquent before the passage of the act. If it had been the intention of the legislature to provide for the release of lands which should be returned delinquent in the future, they would not have limited the privilege to the first of January, 1833, but made it commensurate with the future forfeitures provided for by the act; for according to the limitations provided in the 21st and 22d sections, the privilege of obtaining releases would expire before the first future forfeiture could accrue, which would be for the year 1831, and would not accrue, in the event that the land was delinquent and taxes remained unpaid, until the 1st of December, 1834.

75 Similar provisions to the 21st and 22d sections of the act of 1st of April, 1831, were first introduced into our statute law in the act of February the 9th, 1814, and will be found in the 2d volume of Code of 1819, chapter 24, page 552, sections 41 and 42.

Again, in the act of March the 6, 1827, found in the supplement to the Revised Code of 1819, chapter 285, page 341, sections 1 and 2; and, lastly, in the sections already alluded to in the act of the 1st of April, 1831.

Both the sections in the act of 1814 use the language "*heretofore returned delinquent.*" This phraseology can leave no doubt upon the mind that the past is alone referred to; and yet the grammatical construction of the sections alluded in the acts of 1827 and 1831 are as significant of the past as the act of 1814. They are all clearly acts of amnesty for the past, having no reference to future delinquencies.

Again, it would be a perfect solecism in legislation for the legislature, in preparing an elaborate act the great object of which was to secure the payment of taxes upon those large surveys of lands, to provide ways and means for the owners to get them released from

future delinquencies; thus inviting the owners not to pay the taxes, with the hope of getting their lands released in all future time.

Upon a superficial view it might be considered strange that there was not a continuing power given to the court to release land from taxes, where they could be shown to have been erroneously charged or actually paid. But, in reality, the county courts never have had any continuing power, even to this day, to release land which has been returned delinquent, upon the ground that the taxes have been paid; they have not such authority under the Virginia code. The laws, however, have always required the sheriff to make his delinquent returns upon oath, and made a false return by the sheriff perjury, and, in addition to this, has inflicted upon him a heavy pecuniary penalty where he has returned land delinquent after receiving the taxes, a large part of which goes to the party aggrieved by such false returns; and the pecuniary penalty is inflicted whether the returns (where the taxes have been paid) were made through mistake or design.—(See the 22d section of the act of 1814, before referred to, and which was in force when the act of 1831 passed, and was not repealed by said last mentioned act.) This, with the right to appeal to the legislature for relief, which is always ready to redress the grievances of the citizens, has ever been considered a sufficient guarantee to the landholder, together with the power to the auditor of public accounts, by the 4th section of the act passed the 16th of December, 1831, and which will be found in the supplement to the Revised Code, chapter 289, page 356, section 4.

No continuing power was ever given to the county courts to release lands erroneously charged until the act of 1844–'45, and which is substantially continued in the Virginia Code, page 194, section 97. The act of the 16th of December, 1831, before referred to, gave the auditor of public accounts authority to release lands which had been erroneously charged with taxes, or where the taxes had been actually paid; and this authority was then for the first time conferred upon the auditor, and seems then to have been conferred upon the auditor by the legislature in contemplation of the fact that the act of the 1st of April, 1831, establishing a permanent system of forfeitures, wholly failed to give any such continuing authority to the county courts. And now, under the Virginia Code, unless a party whose land has been erroneously charged applies to the court for relief within one year after the land book has been certified by the clerk, the door of the court is forever barred against him, and his only mode of redress afterwards is
76 by application to the legislature. For the consequences, if the court had no legal authority to release the taxes of 1831, see Elliott *vs.* Piersol, 1st Peters's Reports, pages 339 and 340, which is, that the judgment is a nullity.

It may, perhaps, be contended, that inasmuch as the absence of the Commonwealth's attorney is the only thing which, by the sections authorizing the releases, in express terms is made to vitiate the judgment, that his presence cures all defects, upon the principle of "*expressio unius exclusio alterius.*" But this would be a misapplication of that principle. The fact that the Commonwealth's attorney is expressly required to be present excludes the idea that any other attor-

ney would answer the purpose; but surely his presence never was intended to aid the jurisdiction of the court, or to dispense with anything that would otherwise be necessary to show its jurisdiction. The presence of the Commonwealth's attorney was required through abundant caution, and to secure the Commonwealth against fraud, &c., in procuring the releases.

Although the act of the 1st of April, 1831, before referred to, was intended to establish a permanent system of future forfeitures for delinquencies in the payment of taxes on lands, which should take place after the passage of the act, the next legislature, which was held during the winter of 1831–'2, and the spring of 1832, determined to change the general system established by the aforesaid act of the 1st of April, 1831. That change will be found in the 8th section of the act passed the 10th day of March, 1832, and the subsequent sections contained in said act. The act of 1832, however, only affected the taxes imposed upon lands after the date of the act, and consequently left the taxes for the year 1831 untouched; and lands returned delinquent for that year, if the taxes were unpaid, became forfeited, under the 4th section of the act of the 1st of April, 1831, on the 31st day of December, 1834. Hence the Virginia Code, in the three sections heretofore referred to, makes all lands returned delinquent for the year 1831, or for any year or years prior thereto, which had not been previously sold or the taxes paid, subject to entry, survey, and grant.

Our next proposition is this: that the taxes on said land, or any part thereof, were not released under the second section of the aforesaid act of March the 10th, 1832; for that only releases land where the aggregate amount of taxes due at the date of the act did not exceed ten dollars, and at the date of that act all the taxes were due upon this land for any year from 1821 to 1831, inclusive, making the aggregate sum ninety dollars; for the first three releases referred to only released the taxes due upon the land for the year 1820 and prior thereto, and the fourth and last release was not obtained until the 12th day of November, 1832, some eight months after the date of the act of the 10th day of March, 1832.

For the foregoing reasons it is maintained that the court erred in refusing to give to the jury the 3d, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th, 22d and 24th instructions asked by the defendants, by their counsel, in the first series of instructions asked by the defendants; and that the court also erred in giving to the jury the three instructions asked by the plaintiffs by their counsel; also in refusing to give the 2d instruction in the third series of instructions.

By the record it will be seen that the said tract of 100,000 acres, called "Jabel," was regularly charged on the land books of Kanawha county, and assessed with taxes from 1803 to 1831, inclusive, and in default of payment was regularly returned delinquent for each of those years, and so remained with the said taxes unpaid ever
77 since. In this state of the case, the said land became absolutely forfeited on the 1st day of October, 1834, (Usher's Heirs *vs.* Pride, 15th Grattan, 190,) unless it was exonerated from the taxes, for each and every of those years, under the 21st and 22d sections of

the act of April 1, 1831, by the pretended records of the county court of Kanawha, set forth in the record in this case, the validity of which pretended records, however, the defendants controvert *in toto*.

But supposing the defendants wrong in the latter view, still the forfeiture aforesaid is not defeated; because the pretended records cannot, as your petitioners contend, be fairly construed to exonerate the 100,000 acre tract from the taxes of any year or years not therein stated and shown to be delinquent. And all of the said pretended records, whether taken separately or together, only state and show that the said 100,000 acre tract, called "Jabel," had been returned delinquent for the years 1815, '16, '17, '18, '19, '20, '21, '22, '23, '24, '25, '26, '27, '28, '29, '30, and '31, but for no other years. But the said pretended records do further show that there were two other distinct tracts of land—one of 53,000 acres, called "Grange," and the other of 47,000 acres, called "Sheba"—that were returned delinquent for the years 1805, '09, '10, '11, '12, '13, '14, '15, '16, '17, '18, '19, '20, '21, '22, '23, '24, '25, '26, '27, '28, '29, '30, and '31. And the only obscurity arises from an attempt to exonerate, in one judgment, three several tracts of land from taxes delinquent in different years, and the employment of general language to include the whole, but which must be read distributively to make sense, and by applying the judgment of exoneration to each tract, respectively, for the respective years the same is therein stated to be delinquent, all confusion and ambiguity are avoided.

If the land had not been returned delinquent prior to the 1st of April, 1831, the county court had no jurisdiction of the subject; and if so delinquent, the jurisdictional fact must appear; and being a court of record, must appear by the record; and it is clear that the county courts and the parties, in accordance with the universal practice and opinion in Virginia, under the 21st and 22d sections aforesaid, took the above view of the case, as the pretended records show the delinquency of each tract for each year, respectively, and the name or names, respectively, in which such delinquency accrued, and from which the land was sought to be exonerated.

Taking the foregoing view of the case, the said pretended judgments can only be construed to exonerate the two tracts "Grange" and "Sheba" from the taxes thereon, stated to have been returned delinquent from 1805 to 1831, inclusive, and the other tract, "Jabel," from the taxes thereon stated to have been returned delinquent from 1815 to 1831, inclusive; leaving the said tract of 100,000 acres, called "Jabel," entirely unaffected by any delinquencies thereof for any one year or years from 1803 to 1814, inclusive, or in any other name or names than those mentioned therein. And such is the construction put upon the said pretended judgments by the then auditor, James E. Heath, as will be seen by his certified lists of exonerated lands put in evidence by the plaintiffs.—(See Record, pages 37, '8, '9, 40, and 49.) The said pretended records also state particularly in what names the said 100,000 acre tract was returned delinquent, viz: in the names of the Bank of Delaware, J. Hollingsworth, and John Shallcross, but nowhere state or show that it was ever returned delinquent in the name of Jesse Waln and others; and for the reasons

above given, while the pretended judgments aforesaid may be held to exonerate the tract "Jabel" from the taxes charged in the name or names of the Bank of Delaware, J. Hollingsworth, and John Shallcross, they cannot be fairly construed to exonerate it from the taxes charged in the name of Jesse Waln and others And the auditor, Heath, so regarded it, as appears by his said lists of exonerated lands, wherein he certifies that the said 100,000 acre tract was exone-
78 rated by the county court of Kanawha for the year 1815 in the said names of the Bank of Delaware, J. Hollingsworth, and John Shallcross; while he certifies in said lists, at the same time, that the two other tracts, "Grange" and "Sheba," were exonerated from the taxes for the years before mentioned prior to 1815, viz: from 1805 to 1815, in the several names only therein stated, viz: the Bank of Delaware, J. Hollingsworth, and John Shallcross. By the 7th section of the act of March 15, 1838, the auditor was required, immediately after the 1st of July, 1838, to make out a list of every tract west of the Alleghany mountains then forfeited to and vested in the president and directors of the literary fund for non-payment of taxes charged thereon, and which had not been redeemed before that time, and transmit the said list to the commissioner of forfeited lands in the proper counties, respectively, with such other information as his office might furnish for their guidance.

In pursuance of that act, with all the facts before him, on the 15th day of November, 1838, Auditor Heath, having great knowledge and experience on the subject of forfeited lands in Virginia, made out his list of forfeited lands for the commissioner of forfeited lands for Kanawha county, wherein he certified the said 100,000 acre tract to be forfeited to and vested in the president and directors of the literary fund for taxes charged thereon in the name of Jesse Waln and others from 1803 to 1814, inclusive.

Thus it appears that by the certificates of Auditor Heath and Auditor Bennett the said 100,000 acre tract of land was forfeited and vested in the president and directors of the literary fund, in the name of Jesse Waln and others, for the non-payment of the taxes charged thereon from 1803 to 1814, inclusive, whether the pretended judgments of the county court of Kanawha be valid or invalid.—(See act of April 1, 1831, section 7; and 15 Grattan, page 190.) And so your petitioners say that the court erred in refusing the 17th, 20th, and 21st instructions in the first series of instructions, and the 1st instruction in the third series, asked by the defendants.

It further appears from the said record that the grant to Hollingsworth for the 100,000 acre tract contained sundry specific (not general) reservations of divers tracts of land within the exterior bounds of the said Hollingsworth grant, and there is nothing in the record to show that all or any of the defendants were not upon and within the bounds of the said several tracts which were not granted to Hollingsworth, and as the plaintiffs were obliged to show title to the land in controversy by showing that the land held and claimed by the defendants, and each of them, against whom a recovery was sought, was not only within the exterior bounds of the grant under which they claimed, but also by showing that they were without the bounds of the several

tracts therein reserved as aforesaid.—(See Littell, select case, page 281; 1st Monroe, page 143, &c.) And so the court erred in refusing the fifth and eighth instructions in second series asked by the defendants' counsel.

It further appears from said record that the said 100,000 acre tract of land was delinquent for the non-payment of the taxes thereon from 1803 to 1814, inclusive, as before stated; and that by law there was a lien thereon to the State of Virginia for the said taxes and damages, of which all subsequent purchasers were bound to take notice; and that the said Matthias Bruen, the ancestor of the plaintiffs, and under whom they claim, afterwards bought the said lands with the
79 said tax lien thereon, and took a covenant in his deed to secure him against said delinquent taxes and the State's lien on the land for the same.—(See Record, page 28.) And the said pretended record of the county court of Kanawha wholly failing to show that the said Matthias Bruen had paid the purchase money, or any part of it, before the 1st day of April, 1831. The said Matthias Bruen not only does not appear to have been a *bona fide* purchaser within the meaning of the 21st section of the act of April 1, 1831, but it is clearly manifest that he was not such *bona fide* purchaser, and therefore not entitled to the benefit thereof. And so the court erred in refusing the 4th, 9th, and 10th instructions in the third series asked by the defendants' counsel.

It further appears from said record that William Hill resided on a parcel of the land within the exterior bounds of the 100,000 acre tract, and held and claimed the same by purchase from one Jividen, who bought, held, and claimed the same from ——— ———, who claimed the same under one Samuel Saxton, who claimed the same by title bond from said Matthias Bruen, dated October 21, 1817.—(See Record, pages 30 and 32.) And that the possession of said parcel was taken under said bond soon after the date thereof, when the land was an unbroken wilderness, and had been continued and held ever since by the said William Hill, and those under whom he claimed, and used, enjoyed, and claimed as their own absolute property, or at least that the evidence tended to prove the same. In which event the jury might have presumed a deed for the said parcel so held from said Matthias Bruen, for there was nothing to show that the purchase money was not paid, nor any bonds for the same produced, or even claimed to exist, and if any such had existed the law presumed them paid after twenty years. And so the court erred in refusing the 5th and 7th instructions in third series asked by the defendants' counsel.

The same or similar state of case as the above may be predicated of Jonathan Pfost, and like errors of the court, in refusing to give the 6th and 8th in third series of instructions asked by the defendants' counsel.

By the laws of Virginia the only right acquired by an entry, or by entry and survey, before the emanation of the grant, is an inchoate equity, and which cannot be the subject of investigation in a court of law in an action of ejectment, where alone legal titles and legal claims are litigated; and for that reason the court erred in refusing

the 11th and 12th instructions in the second series asked by the defendants.

The court also erred in refusing to give the 1st, 2d, 3d, and 4th instructions in the second series asked by the defendants.

For the foregoing and other errors apparent on the face of the said record, your petitioners pray a writ of error to the judgment aforesaid, and that the same be reserved.

Petitioners by their counsel.

JAMES H. BROWN.
ANDREW PARKS.

80 We, James H. Brown and Andrew Parks, attorneys practicing in the district court of the United States for the western district of Virginia, respectfully represent that in our judgments there is sufficient error in the foregoing judgment complained of to require its review and reversal.

JAMES H. BROWN.
ANDREW PARKS.

NOVEMBER 15, 1860.

81 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the district court of the United States for the western district of Virginia, holden at Charleston, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, plaintiffs, and Robert T. Harvey, William A. McMullin, John P. Hate, Benjamin P. Byram, Andrew Parks, James H. Brown, James W. Hogue, Ira J. McGinnis, James Hutchinson, John Brown, John Dryden Martin, Edward King, Roderick King, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, James T. Lett, Dudly S. Montague, Jonathan Pfost, Miller Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Leander P. Watkins, Arthur Waugh, Creed M. Boswell, John M. Fisher, Noah Dawson, Washington Parsons, Silas Runyan, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David T. Saunders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, John W. Dawson, Michael Derrick, William B. Sigman, Hiram Asbury, William A. Asbury, Silas Carney, James Casey, William Clendennen, Benjamin Coleman, James Craigo, Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higginbotham, Aaron Hill, William Hill, Moses Higginbotham, William T. Higginbotham, Francis Higginbotham, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel

King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Saunders, Jacob M. Sigman, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harman Williams, John Russell, Silas Painter, J. W. Atkinson, Thomas Davis, A. A. Handley, John A. Harman, Bushrod Harrison, G. W. Hedrick, Richard Snell, Thomas H. Harvey, Thomas A. Vickars, Jarret Hill, John Henson, sen., Samuel P. Stover, Miriam G. Hoffman, S. K. Jennings, Ezekiel Jividen, Joel Jividen, William Duncan, James Arthur, George Bailey, Elisha M. Milton, Drury Bailey, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, William Fisher, Anthony Hall, Edward Harman, Henry Harman, Chrisman Harrison, Perry Fisher, Jeremiah Harrison, George Higginbotham, Thomas Jones, and Martin King, a manifest error hath happened, to the great damage of the said Robert T. Harvey, William A. McMullin, John P Hale, Benjamin P. Byram, Andrew Parks, James H. Brown, James W. Hoge, Ira J. McGinnis, James Hutchinson, John J. Brown, John Dryden, Martin Edward King, Roderick King, John Little, Oliver T. Milan, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, James T. Lett, Dudley S. Montague, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Leander P. Watkins, Arthur Waugh, Creed M. Boswell, John M. Fisher, Noah Dawson, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryan, David T. Saunders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, John W. Dawson, Michael Derrick, William B. Sigmon, Hiram Asbury, William A. Asbury, Silas Carney, James Casey, William Clendennin, Benjamin Coleman, James Craigo, Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Catharine Hedrick, Henry Hedrick, John Hedrick, jr., James Higginbotham, John Higginbotham, Aaron Hill, William Hill, Mose Higginbotham, William T. Higginbotham, Francis Higginbotham, Joseph Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kinnison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Saunders, Jacob M. Sigman, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harman Williams, John Russell, Silas Painter, J. W. Atkinson, Thomas Davis, A. A. Handley, John A. Harman, Bushrod Harrison, George W. Hedrick, Richard Snell, Thomas H. Harvey, Thomas A. Vicars, Jarrett Hill, John Henson, sen., Samuel P. Storer, Miriam G. Hoffman, S. K. Jennings, Ezekiel Jividen, Joel Jividen, William Duncan, James Arthur, George Bailey, Elisha M. Milton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, William Fisher, Anthony Hall, Edward Harman, Henry Harman, Chrisman Harrison, Perry Fisher, Jeremiah Harrison, George Higginbotham, Thomas Jones, and Martin King, as by their complaint appears.

We being willing that error, if any hath been, should be duly cor-

rected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the eleventh of March, in the year of our Lord one thousand eight hundred and sixty-one.

WM. THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

JOSEPH W. CALDWELL,
Clerk of the district court of the United States for the western district of Virginia.

82 The United States of America to Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the western district of Virginia, at Charleston, wherein Robert T. Harvey, William A. McMullin, John P. Hale, Benjamin P. Byrum, Andrew Parks, James H. Brown, James W. Hoge, Ira J. McGinnis, James Hutchinson, John J. Brown, John Dryden, Martin Edward King, Roderick King, John Little, Oliver T. Milam, Sebastian Ray, William Ray, Thomas Stanley, Augustus D. Wallace, James Martin, James T. Lett, Dudley S. Montague, Jonathan Pfost, Milton Shank, James Stewart, William D. Short, John J. Thompson, James Tucker, Leander P. Watkins, Arthur Waugh, Creed M. Boswell, John M. Fisher, Noah Dawson, Washington Parsons, Silas Runyon, Charles Carney, James Goff, Samuel McGraw, Josiah Bryant, David T. Saunders, James McGraw, Gill C. Turbell, Arthur Ray, John R. McClanahan, Hezekiah Agee, Bushrod Bailey, Alfred Bailey, John J. Bean, George B. Rust, John W. Dawson, Michael Derrick, William B. Sigmon, Hiram Asbury, William A. Asbury, Silas Carney, James Casey, William Clendinen, Benjamin Coleman, James Craigo, Sarah Craigo, John Craigo, Andrew Derrick, Matthias Goodwin, Leonard C. Fisher, Allen W. Harman, Calvin Hart, William Harrison, Benjamin Hedrick, Catherine Hedrick, Henry Hedrick, John Hedrick, jr., James Higginbotham, John Higginbotham, Aaron Hill, Wm. Hill, Mose Higginbotham, Wm. T. Higginbotham, Francis Higginbotham, Jos.

Hutton, Noah H. Hoffman, Simeon Kelly, Reuben P. Kennison, Benjamin King, Caleb King, Nathaniel King, J. E. Landers, T. D. Pitchford, Thomas Priddy, John E. Ray, Bennett Rayburn, Richard Saunders, Jacob M. Sigmon, John M. Smith, Robert Smith, William Smith, Doddridge Taylor, Allen Warner, Thomas Warner, Harman Williams, John Russell, Silas Painter, J. W. Atkinson, Thomas Davis, A. A. Handley, John A. Harman, Bushrod Harrison, George W. Hedrick, Richard Snell, Thomas H. Harvey, Thomas A. Vicars, Jarrett Hill, John Henson, sen'r, Samuel P. Stover, Miriam G. Hoffman, S. K. Jennings, Ezekiel Jividen, Joel Jividen, William Duncan, James Arthur, George Bailey, Elisha M. Melton, Drury Bradley, Nathan Casto, Samuel Conway, William Craigo, Joseph Fisher, William Fisher, Anthony Hall, Edward Harman, Henry Harman, Chrisman Harrison, Perry Fisher, Jeremiah Harrison, George Higginbotham, Thomas Jones, and Martin King, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John W. Brockenbrough, judge of the said district court, at Charleston aforesaid, this eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-one.

Teste: JOS. W. CALDWELL.
Clerk D. C. U. S. W. D. of Va.

83 We, as counsel for the defdts. in error, Edward G. Tyler, Henry J. Whitehouse, and Eveline, his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, accept service of the within writ, to have the same effect, and no more, than if personally served upon said parties.

BENJ. H. SMITH.
S. A. MILLER.

April 18, 1861.

As agent for the above defdts., I ratify and approve of the above acceptance of service.

JAS. L. McLEAN.

April 18, 1861.

84 Know all men by these presents that we, Robert T. Harvey, John P. Hale, William A. McMullin, George M. Morrison, and John Morris, are held and firmly bound unto Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruen, Alexander H. Bruen, and William Pennington, in the sum of two thousand dollars, lawful money of the United States, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 16th of February, 1861.

The condition of the above obligation is such that whereas, at a district court of the United States for the western district of Virginia, held at Charleston on the 11th day of August, 1860, in an action of ejectment therein pending, wherein the said Edward Griswold Tyler and others were plaintiffs, and Robert T. Harvey and others were defendants, the said Edward Griswold Tyler, Henry J. Whitehouse, and Eveline H., his wife, Herman Bruen, Alexander M. Bruen, and William Pennington, recovered against Robert T. Harvey and others the possession of a tract of one hundred thousand acres of land, lying in the counties of Putnam, Mason, Jackson, and Kanawha, and the costs of said suit:

And whereas the said Robert T. Harvey and others have applied to the Supreme Court of the United States for a writ of error to the sa id judgment:

Now, if the said Harvey and others shall obtain and prosecute said writ of error with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

ROBERT T. HARVEY. [SEAL.]
J. P. HALE. [SEAL.]
W. A. McMULLIN. [SEAL.]
G. M. MORRISON. [SEAL.]
JOHN MORRIS. [SEAL.]

Sealed and delivered in presence of—
JNO. L. McMULLIN,
JOEL S. QUARRIER,
JNO. RUNDLE,
Witnesses as to Harvey, Hale, and Morris.

JNO. L. McMULLIN,
JOEL S. QUARRIER,
MOSES F. WARD,
Witnesses as to Morrison and McMullin.

85 Signed and acknowledged before me.
Teste: JOHN DRYDEN,
D. for J. W. Caldwell,
Clerk of District Court of the United States, Charleston.

We hereby certify that in our opinion the above bond is perfectly good.

ANDREW PARKS.
JAMES H. BROWN.

Approved by JOHN W. BROCKENBROUGH,
Judge District Court of the United States,
Western District of Virginia.

Copy. Teste: JOS. W. CALDWELL,
Clerk of District Court of the United States,
Western District of Virginia.